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PENNSYLVANIA BULLETIN

Volume 33
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Department of Conservation and Natural
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State Architects Licensure Board
State Board of Optometry
State Board of Vehicle Manufacturers, Dealers
and Salespersons

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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 340, March 2003

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Pennsylvania Bulletin

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

Adoption, Amendment or Repeal of Regulations

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

Bulletin before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

Pennsylvania Code

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

SUBSCRIPTION INFORMATION: (717) 766-0211
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Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where “no fiscal impact” is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2003.

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THE GOVERNOR

GOVERNOR'S OFFICE

Proclamation of Disaster Emergency

February 17, 2003

Whereas, Investigations made at my direction have disclosed that a severe winter storm with heavy accumulations of snow and high winds resulting in extensive road closures, community public safety delays, property damage, and other adverse impacts upon the population of the Commonwealth of Pennsylvania; and

Whereas, the emergency situation throughout the Commonwealth has the potential for requiring the sheltering or evacuation of those citizens for their protection; and

Whereas, the emergency situation may be of such magnitude or severity as to render essential the Commonwealth's supplementation of county and municipal efforts and resources and the activation of all applicable state, county and municipal emergency response plans;

Now Therefore, pursuant to the provision of Subsection 7301(c) of the Emergency Management Services Code (35 Pa. C. S. Section 7101 et seq), I do hereby proclaim the existence of a disaster emergency in all 67 counties of the Commonwealth and I direct all Commonwealth departments and agencies to utilize all available resources and personnel as is deemed necessary to cope with the magnitude and severity of this emergency situation. The time consuming bid and contract procedures and formalities normally prescribed by law shall be waived for the duration of the Proclamation, mandatory constitutional requirements excepted.

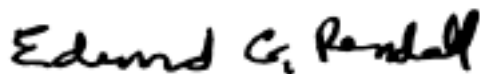
Further, I hereby authorize the Secretary of the Department of Transportation to use all available equipment, resources, and personnel of the Department, in whatever manner that he deems necessary, to ensure that all interstate, other federal and state highways in the Commonwealth are cleared of snow and any other obstructions resulting from this severe winter storm. In addition, I hereby waive any laws or regulations that would restrict the application and use of the Department's equipment, resources and personnel to assist local jurisdictions in clearing and removal of snow and other types of obstructions from non-state-owned highways. This assistance to local jurisdictions may be provided solely at the discretion of the Secretary of the Department of Transportation. However, this assistance does not apply to privately owned highways, roads, streets, or other types of property.

Further, I direct that the emergency response and recovery aspects of the Commonwealth and all applicable county, municipal and other Disaster response plans be activated and that all state, county and municipal actions taken to implement those plans be coordinated through the Pennsylvania Emergency Management Agency; and

Still Further, I hereby urge the governing bodies and executive officers of all political subdivisions affected by this emergency to act as necessary to meet the current exigencies as legally authorized under this Proclamation, namely, by the employment of temporary workers, by the rental of equipment and by entering into such contracts and agreements as may be

required to meet the emergency, all without regard to those time consuming procedures and formalities normally prescribed by law, mandatory constitutional requirements excepted.

GIVEN under my hand and the Seal
of the Governor, at the City of
Harrisburg, this seventeenth day of
February in the year of our Lord
two thousand and three and of the
Commonwealth the two hundred
and twenty-seventh.

A handwritten signature in black ink, reading "Edmund G. Rendall". The signature is written in a cursive style with a large, prominent "E" and "R".

Governor

[Pa.B. Doc. No. 03-342. Filed for public inspection February 28, 2003, 9:00 a.m.]

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Definitions

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 103 (Definitions) to include a definition of signature that would make it clear that signature, when used in reference to a court generated document, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, and explains that the signature must be placed on the document by the signatory or by someone with the signatory's authorization. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 800
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@supreme.court.state.pa.us

no later than Friday, March 28, 2003.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

* * * * *

SIGNATURE, when used in reference to a court generated document, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by

the signatory or by someone with the signatory's authorization, unless otherwise provided in these rules.

* * * * *

Comment

* * * * *

Neither the definition of law enforcement officer nor the definition of police officer gives the power of arrest to any person who is not otherwise given that power by law.

The definition of signature was added in 2003 to make it clear that when a rule requires a court generated document include a signature or be signed, the signature may be in any of the forms provided in the definition.

* * * * *

Official Note: Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; **amended _____, 2003, effective _____, 2003.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed definition of "signature" published at 33 Pa.B. 1048 (March 1, 2003).

REPORT

Proposed Amendment to Pa.R.Crim.P. 103

Definition of Signature

The Committee has been undertaking a review of the Criminal Rules as part of its continuing efforts to 1) encourage and facilitate the use of advanced communication technology (ACT) in court proceedings,¹ 2) conform the rules to the ACT changes adopted by the Supreme Court in 2002,² 3) accommodate the automation of the common pleas courts, and 4) respond to issues raised by the Supreme Court's Common Pleas Court Management System (CPCMS) Project³ staff. One issue raised by the CPCMS Project staff was "whether the rules permit a judge, defendant, counsel, etc. . . to use an electronic signature to sign a form." The Committee's review of the rules revealed that without some specific reference to electronic signatures, there could be confusion whether this form of signature is permitted. We also agreed some clarification in the rules is necessary if advanced commu-

¹The Committee strongly believes the use of technology should be encouraged when feasible because this promotes the Court's goals of statewide uniformity in the practice of law, and the use of technology has been shown to result in a more efficient use of the court's limited resources.

²See, e.g., Court's May 10, 2002 Order published at 32 Pa.B. 2591 (May 25, 2002).

³The CPCMS Project is developing a statewide automated case management system for the common pleas criminal courts.

nication technology procedures and automation are to be successfully integrated into the Criminal Rules and the criminal trial process. The Committee considered various means of providing this clarification and concluded the best way to proceed at this time is to define in the rules the term "signature" and make it clear the term "signature" includes electronic signatures on court generated documents that are prepared and transmitted electronically.

During the Committee's discussion of the wording of a definition, several members expressed concerns about (1) the scope of the definition and (2) whether some controls over the use of forms of signatures other than a traditional signature handwritten by the signatory should be included. Concerning the scope of the definition, because the changes tie into the common pleas automation which primarily is a court management system, the Committee agreed that, for the time being, the definition should be limited to court generated documents and not documents coming into the court from counsel or defendants. In addition, the members thought this definition provides the best means of capturing a judge's signature so that when the judge authorizes a document, the signature of the judge can be generated or reproduced on the document in lieu of the judge physically handwriting his or her name.

Concerning placing some controls in the definition, the members particularly were concerned about signatures being placed on documents without the authorization of the individual purporting to have signed the document. We noted that the same situation does arise with signatures that are not electronically generated, and that there probably is no procedural way to completely protect against unauthorized signatures. However, we agreed the definition could include a provision requiring that a signature must be affixed upon the document by the signer or by someone with the signer's authorization.

In view of these considerations, the Committee is proposing the amendment of Rule 103 (Definitions) by including a definition of the term "signature" to make it clear that when used in reference to a court generated document, signature includes: 1) a handwritten signature; 2) a copy of a handwritten signature; 3) a computer generated signature, or 4) a signature created, transmitted, received, or stored by electronic means, and explain that the signature must be placed on the document by the signatory or by someone with the signatory's authorization.

[Pa.B. Doc. No. 03-343. Filed for public inspection February 28, 2003, 9:00 a.m.]

[234 PA. CODE CH. 6]

Request for Instructions, Charge to the Jury and Preliminary Instructions

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions). The proposed changes provide that a judge's charge to the jury may be given before or after closing arguments, or at both times. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal.

Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 800
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@supreme.court.state.pa.us

no later than Friday, March 28, 2003.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 647. Request for Instructions, Charge to the Jury, and Preliminary Instructions

(A) Any party may submit to the trial judge written requests for instructions to the jury. Such requests shall be submitted within a reasonable time before the closing arguments, and at the same time copies thereof shall be furnished to the other parties. Before closing arguments, the trial judge shall inform the parties on the record of the judge's rulings on all written requests. The trial judge shall charge the jury, **and the charge may be given before or after the arguments are completed, or at both times.**

* * * * *

Comment

Paragraph (A) [, **amended in 1985,**] parallels the procedures in many other jurisdictions which require that the trial judge rule on the parties' written requests for instructions before closing arguments, that the rulings are on the record, and that the judge charge the jury **before or after the closing arguments, or at both times.** See, e.g., Fed.R.Crim.P. 30; ABA Standards on Trial by Jury, Standard 15-3.6(a); Uniform Rule of Criminal Procedure 523(b).

Under paragraph (A), the preferred procedure is that the trial judge charge the jury before the closing arguments. This enables the attorneys during the closing arguments to relate the facts of the case and the evidence presented during the trial to the law as explained by the judge in the charge to the jury, and aids the jury in their comprehension.

* * * * *

Official Note: Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended

March 1, 2000, effective April 1, 2001;
amended _____, 2003, effective _____ 2003.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendment concerning the time for charging the jury published at 33 Pa.B. 1050 (March 1, 2003).

REPORT

Proposed Amendment to Pa.R.Crim.P. 647

Judge's Charge to the Jury

The Committee received correspondence raising the issue concerning whether the Criminal Rules should provide that the judge charge the jury before closing arguments similar to the procedure in civil cases.¹ The correspondence suggested that: 1) when the judge charges the jury prior to the closing arguments, the attorneys know exactly how the judge defines the law and can incorporate the judge's language into their closings; 2) the attorneys also are comfortable when the law has been defined for the jury and can omit repeating the definitions in favor of arguing the facts or the particular applicability of the law to the facts; and 3) although the Criminal Rules do not permit the judge to charge the jury before the closing arguments, this procedure has been employed successfully by judges in civil cases in Pennsylvania, and in other jurisdictions.² The Committee agreed the points raised in the correspondence merited consideration, and that addressing it in the Criminal Rules would be helpful to the lawyers in formulating their arguments and the jurors in their understanding of the law applicable to the case they will decide.

During the Committee's consideration of this change, we reviewed the rules in other jurisdictions. We found that several jurisdictions have adopted rules modeled on Federal Rule 30 (Instructions), which was amended in 1987 to permit the court to instruct the jury before or after the closing argument of counsel, or at both times.³ The Advisory Committee Notes following the federal rule

explain that the purpose of the 1987 amendment permitting the closing before or after the closing arguments or at both times was "to give the court discretion to instruct the jury before or after closing arguments, or at both times." The Notes also explain that the change permits courts 1) to continue instructing the jury after closing arguments, 2) to instruct before arguments in order to give the parties an opportunity to argue to the jury in light of the exact language used by the court, and 3) to instruct the jury both before and after the arguments, which assures that the court retains power to remedy omissions in pre-argument instructions or to add instructions necessitated by the arguments.

The members agreed with these Advisory Committee Notes. We also concluded that when jury instructions are given before the closing arguments, the jurors are "fresh," in a better position to listen to the judge's charge, and more equipped to understand the argument of counsel. The members also noted that when counsel is able to apply the evidence in the case to the judge's specific language, the closing arguments are more effective. Finally, the Committee feels strongly that the court should have discretion when to charge the jury, but that the rule should emphasize that for all the beneficial reasons enumerated the preferred procedure is for the charge to be given before the arguments.

In view of these considerations, the Committee agreed to amend Rule 647(A) to provide "The trial judge shall charge the jury, and the charge may be given before or after the arguments are completed, or at both times." The Committee also is proposing the Comment include an explanation that the judge's charge to the jury before the closing arguments is "the superior and preferred practice" because this enables the attorneys during the closing arguments to relate the facts of the case and the evidence presented during the trial to the law as explained by the judge in the charge to the jury, and aids the jury in their comprehension.

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¹Pa.R.Civ.P. 233.1(c)(2) (Conduct of Trial. Trial by Jury) provides that the court may "charge the jury at any time during trial."

²See, e.g., Fed.R.Crim.P. 30 (Instructions).

³Prior to the 1987 change, Federal Rule 30 required that the court instruct the jury after the arguments of counsel.

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 4225 AND 4226]

Early Intervention Services

The Department of Public Welfare (Department), under the authority of the Early Intervention Services System Act (act) (11 P.S. §§ 875-102—875-503) and section 201(2) of the Public Welfare Code (62 P.S. § 201(2)), adopts amendments to read as set forth in Annex A. Notice of proposed rulemaking was published at 30 Pa.B. 2785 (June 3, 2000).

Purpose

The purpose of this final-form rulemaking is to codify the administrative, financial and eligibility requirements, the standards for personnel and service delivery and the procedural protections that govern the Department's early intervention program.

Need for the Final-Form Rulemaking

In sections 105 and 302(a) of the act (11 P.S. §§ 875-105 and 875-302(a)), the General Assembly directed the Department to develop regulations for a Statewide system of early intervention services. The final-form rulemaking are to address methods for locating and identifying eligible children; criteria for eligible programs; contracting guidelines; personnel qualifications and preservice and in-service training; early intervention services; procedural safeguards; appropriate placement, including the least restrictive environment; quality assurance, including evaluation of the developmental appropriateness, quality and effectiveness of programs, assurance of compliance with program standards and provision of assistance to assure compliance; data collection and confidentiality; interagency cooperation at the State and local level through State and local interagency agreements; development and content of individualized family service plans (IFSP); and other issues as required to comply with the act and Part H of the Individuals with Disabilities Education Act (IDEA), which has since been redesignated as Part C in the IDEA Amendments of 1997 (Pub. L. No. 105-17) (20 U.S.C.A. §§ 1431—1445).

In addition, under the authority of House Resolution 354 of 1996, the Legislative Budget and Finance Committee (LBFC) recommended that the Department promulgate program regulations in accordance with the act. The Department agrees with the LBFC that the early intervention program will benefit from the structure that program regulations provide and that the regulations will promote standardization of practices and procedures among counties. Finally, the regulations are needed to enable the Department to continue to be eligible for Federal funding under Part C of IDEA.

Affected Individuals, Groups and Organizations

County mental health/mental retardation (MH/MR) programs (county MH/MR programs) are directly affected by and must comply with the final-form rulemaking. Public and private service providers and agencies under contract with County MH/MR programs to provide early intervention services are also affected by and must comply with the requirements of this chapter that do not explicitly apply only to County MH/MR programs. Infants and toddlers and their families who are referred for or receive

early intervention services are affected by the final-form rulemaking, since they are the consumers of the services that are the subject of the final-form rulemaking.

Summary of Public Comments and the Department's Responses

The Department initially requested that interested parties submit written comments, recommendations or objections regarding the proposed rulemaking within a 60-day comment period. In response to requests from several stakeholders, the Department extended the comment period by 90 days. The Department received a total of 117 written comments and transcribed oral statements within the 150-day comment period. Following receipt and review of public comments, the Department held a meeting with stakeholders on March 22, 2001, to review the revisions to the rulemaking that it was considering. The Department invited the stakeholders to contribute oral comments to the revisions under consideration at the meeting as well as to submit final written comments by March 29, 2001. The Department received and considered these additional comments in developing the final-form rulemaking.

The Department received comments from every sector of the community that will be affected by this final-form rulemaking—consumers, advocates, County MH/MR programs and service providers and agencies—as well as from the Independent Regulatory Review Commission (IRRC) and the Majority and Minority Chairs and the members of the House Health and Human Services Committee. The Department appreciates the many valuable comments and recommendations received from stakeholders in the various venues throughout the public comment period. The Department has carefully reviewed and considered each comment and incorporated many of the recommendations into the final-form rulemaking. The Department values the time and expertise stakeholders contributed to the rulemaking process and their commitment to developing an effective regulatory tool for early intervention services.

Following is a summary of the major comments and the Department's responses, as well as a description of changes made to the proposed rulemaking in response to the public comments received and the Department's own internal review in preparation for final-form rulemaking.

Section 4226.1. Introduction (redesignated as "Policy").

One commentator suggested that the clause "which is focused on the unique needs of the child" did not clearly convey the intent to meet the child's needs.

Response

The Department agrees and has amended this section to address this concern and to set forth the policy of the final-form rulemaking more clearly. In doing so, the Department deleted the sentence "Early intervention services for an infant or toddler are provided in conformity with an IFSP" as redundant because, as explained below in the response to the comments to § 4226.5 (relating to definitions), service provision in conformity with the IFSP has been added to the definition of "early intervention services." The Department also wanted to avoid the connotation that this component of the definition of "early intervention services" is more important than any other by including it in the policy statement while omitting others. In addition, the Department

changed "eligible children" to "infants and toddlers with disabilities and at-risk children" to conform this section to changes made to the definitions of all three terms, also explained in the responses to comments to § 4226.5.

Section 4226.2. Purpose.

The Department amended this section to identify the purpose of the rulemaking more specifically and to clarify that the rulemaking applies only to the Department's early intervention program and does not govern the program administered by the Department of Education.

Section 4226.3. Applicability.

The Department amended this section to clarify that service providers and agencies as well as county MH/MR programs must comply with the final-form rulemaking.

Section 4226.4. Noncompliance (redesignated as "Penalties for noncompliance").

The Department amended this section by incorporating provisions of proposed § 4226.39 (relating to penalties for noncompliance) so that all potential penalties for noncompliance are contained in the same section. To avoid unnecessary repetitiveness, the Department combined the penalties from this section and § 4226.39(a) as proposed into redesignated § 4226.4(a). Because subsection (a) as revised encompasses all potential penalties, whether as a result of action or inaction by either the county MH/MR program or a service provider or agency, the Department deleted the phrase "of a public legal entity." The Department also made technical changes to this subsection to conform to changes made to the definitions of "child," "at-risk child" and "infant or toddler with a disability," explained in the response to comments to § 4226.5.

In redesignated subsection (b), the Department restated the appeal provision from proposed § 4226.39(b), revised to expand the county MH/MR program's right to appeal to apply to any Department action taken in accordance with subsection (a), not merely those actions "related to loss of funding."

Section 4226.5.

Definition of "appropriate professional requirements."

One commentator noted that the phrases "highest requirement" in subparagraph (i) and "suitable qualifications" in subparagraph (ii) were vague and should be clarified. Two other commentators stated that entry-level requirements are based on minimal requirements in a profession or discipline and recommended changing the wording to "lowest requirements." Two commentators suggested that children who are deaf or hard of hearing have special needs and recommended that language be added in the definition specifying that services for these children must be provided by people trained in specific disabilities.

Response

The Department has deleted this definition because additional review confirmed that the term "appropriate professional requirements" does not appear this chapter.

Definition of "assessment."

The Department made two technical changes to this definition by striking "part" and substituting "chapter" to correct an inadvertent error in the proposed rulemaking and by striking the words "identification of" as redundant of the introductory paragraph.

Definition of "assistive technology device."

One commentator asked what is included in the term "assistive technology device" and how it is funded.

Response

The Department did not identify specific assistive technology devices in the final-form rulemaking because scientific and technological advances lead to the development of new devices over time and practitioners in the field are familiar with currently available devices. Assistive technology devices that are currently available for infants and toddlers include augmentative communication systems, auditory equipment and switches and switch-adapted toys. Funding for this service is available through the funding sources that the Department has established for early intervention services and could vary depending on the type and purpose of the device.

The Department made a technical change to the definition to conform to the changes made to the definitions of "child" and "infant or toddler with a disability."

Definition of "assistive technology service."

One commentator suggested that subparagraph (v) of the definition be expanded to state "as in the case of deaf and hard of hearing infants, toddlers, their parents and their families, training may include instruction in visual language, such as American Sign Language."

Response

The definition of "assistive technology service" mirrors 34 CFR 303.12(d)(1) (relating to definition of "early intervention services"). In addition, the Department does not agree that assistive technology services include instruction in American Sign Language, since those services are intended to assist the child "in the selection, acquisition or use of an assistive technology device." Therefore, the Department did not make the suggested change to subparagraph (v). Nonetheless, the Department recognizes that instruction in visual language may be a service determined to be appropriate by the child's IFSP team in accordance with §§ 4226.72 and 4226.74 (relating to procedures for IFSP development, review and evaluation; and content of the IFSP).

After additional internal review, the Department revised the definition to clarify that the services include assistance to the family of an infant or toddler with a disability. The Department also changed "individuals" to "infants and toddlers" in subparagraph (vi) to improve clarity. Finally, the Department changed "child" to "infant or toddler with a disability" to conform the definition to revisions to the definitions of those terms.

Definition of "at-risk infant or toddler."

The Department changed the defined term from "at-risk infant or toddler" to "at-risk child" since the latter term is used in the final-form rulemaking. In addition, to improve clarity and to avoid the need to consult the act for a complete definition of the term, the Department changed the definition by specifying the population categories rather than merely referring to the act.

Definition of "audiology services."

The Department made technical changes to this definition to avoid inconsistency within the definition and with the format of similar definitions in this section.

Definition of "child."

One commentator recommended that the definition of "child" be revised to include "infants and toddlers with

disabilities" to be consistent with the 34 CFR 303.7 (relating to definition of "children").

Response

The Department did not make the recommended change because the definition, if revised as suggested, would exclude children who have not yet been determined eligible for early intervention services as well as at-risk children. In response to the recommendation, the Department instead revised the definition of "child" to distinguish between that term and "infant or toddler with a disability" as used throughout. As revised, "child" as used in this chapter includes children who have been referred for services but not yet determined eligible as well as "at-risk children" and "infants and toddlers with disabilities."

Definition of "county MH/MR program (legal entity)" (redesignated as "county MH/MR program").

One commentator suggested that the acronym "MH/MR" be spelled out in this definition. Several commentators objected to the term "mentally disabled" as used in this definition because it does not include infants and toddlers referred for or receiving early intervention services. They suggested using the term "persons with disabilities" instead.

Response

Rather than spelling the acronym MH/MR as recommended, the Department changed the definition of "county MH/MR program," which was taken from section 201(2) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4201(2)). The proposed alternative of "persons with disabilities" is over inclusive, since it encompasses persons with only physical disabilities who are not served by the county MH/MR programs. Recognizing that the term did not encompass infants and toddlers eligible for early intervention services, the Department revised the definition to tailor it to the final-form rulemaking by replacing "the mentally disabled" with "infants and toddlers with disabilities and at-risk children."

The Department removed the term "legal entity" from the definition and throughout the final-form rulemaking, since the county MH/MR programs are the only entities responsible for administering early intervention services at the local level, and the term is therefore potentially confusing and unnecessary.

Definition of "culturally competent."

Two commentators pointed out that "culturally competent," used in § 4226.33 (relating to traditionally underserved groups), is not defined and suggested adding a definition or providing examples of culturally competent services.

Response

The Department agrees that the term should be defined and has added a definition.

Definition of "developmental delay" (deleted on final-form).

One commentator stated that the definition is unclear. Another commentator noted that the definition is not age specific.

Response

The Department deleted the definition of "developmental delay" because the meaning of the term, including the age group to which it applies, is clearly described in § 4226.22 (relating to eligibility for early intervention

services), the only section in which the term appears. Therefore, a free-standing definition of the term is unnecessary.

Definition of "early intervention program" (deleted on final-form).

In reviewing the proposed rulemaking, the Department determined that this term was used inconsistently to refer to both the Statewide and the county early intervention programs and so could be confusing. The term now appears only in § 4226.2 to refer to the Statewide program. Therefore, no definition of the term is needed.

Definition of "early intervention services."

The Department received several comments on the definition of "early intervention services." Some commentators noted that the definition varied from those in 20 U.S.C.A. § 1432(4) and 34 CFR 303.12 by excluding services for the family, references to the IFSP and natural environments and the phrase "but not limited to" in subparagraph (v). These commentators suggested that the definition be revised to mirror the Federal provisions. Other commentators suggested a variety of additional language changes—such as expanding the list of developmental areas in subparagraph (iii) by adding the phrase "but not be limited to these areas"; including all available services and, specifically, hearing sensitivity services, nutrition services and nursing services in subparagraph (v); specifying the qualifications of special educators in subparagraph (vi) by adding the phrase "with specific expertise to address the child's needs, including cognitive, physical and/or sensory (deafness or blindness) related needs"; adding and clarifying the role of teachers of vision and hearing to subparagraph (vi); and adding sign language instructors, doctors of optometry and registered dietitians to subparagraph (vi).

One commentator recommended that because the early interventionist is not a recognized educational entity and does not have defined education standards, the term should be deleted from subparagraph (vi) or the recitation of responsibilities in § 4226.55 (relating to early interventionist qualifications) expanded. One commentator also asked for clarification of the difference between an early interventionist and a special educator and between a mobility specialist and a physical therapist.

Response

The Department made some, but not all, of the suggested changes to the definition, as well as other changes after internal review. The Department inserted "meet the requirements of this chapter," previously in subparagraph (iv), into the introductory paragraph to clarify and to emphasize at the outset of the definition that all early intervention services must be provided in accordance with the final-form rulemaking. The Department added "in conformity with the IFSP" as revised subparagraph (iv) because that is included in the definition of "early intervention services" in section 103(5) of the act (11 P. S. § 875-103(5)).

The Department did not modify the definition to add components of the Federal definition that may be construed to impose substantive requirements. Rather than imposing substantive requirements in a definition, the Department amended § 4226.72(d) to add paragraph (3), to address collaboration with parents and added § 4226.75 (relating to implementation of the IFSP), which addresses natural environments.

The Department added "and the needs of the family related to enhancing the infant or toddler's development"

in subparagraph (iii), which was inadvertently omitted from the proposed rulemaking. The Department also added "including vision and hearing" to subparagraph (iii)(A) because this phrase was also inadvertently omitted from the proposed rulemaking. The Department did not add the phrase "but not limited to these areas" to this subparagraph because the five areas listed are the primary developmental areas for infants and toddlers.

The Department added nursing and nutrition services in subparagraph (v) because these services were inadvertently omitted from the proposed rulemaking. The Department separated audiology services from speech-language pathology services because these are discrete service types. The Department did not add any other services but added the phrase "but not limited to" to clarify that the list of services is not intended to be exhaustive. Therefore, although not included in the listing, hearing sensitivity services may be eligible early intervention services to meet the developmental needs of an infant or toddler with a disability and the infant or toddler's family. The Department deleted "services" from subparagraph (v)(G) to conform the phrasing of the listed service to the term "service coordination" defined later in this section. The Department also deleted the clause "that are necessary to enable an infant or toddler and the infant or toddler's family to receive another service described in this paragraph" from subparagraph (v)(N) because it is redundant of the definition of "transportation and related costs" later in this section.

In subparagraph (vi), the Department separated audiologists from speech-language pathologists because these are discrete specialties. The Department did not otherwise modify the qualified personnel listing because, as with services, the list is not intended to be exhaustive and it is impossible to identify every type of practitioner that could provide early intervention services. With the exception of service coordinator and early interventionist, the enumerated personnel are those specified in the definition of "early intervention services" in section 103(4) of the act, section of IDEA and 34 CFR 303.12(e). The Department included service coordinator and early interventionist in the listing to reflect the Commonwealth early intervention program because these are common provider types in the early intervention program. Because these professionals, unlike the others listed in the definition, are not licensed by another State agency, their specific qualifications and functions are set forth in §§ 4226.52—4226.55. The Department revised and clarified the responsibilities and qualifications of the early interventionist in § 4226.54 (relating to early interventionist responsibilities) and § 4226.55. The changes are explained in more detail in the responses to the comments on those sections.

The Department changed "including, at a minimum" to "including but not limited to" to clarify that other practitioner types may also be "qualified." Therefore, although not included in the listing, teachers of vision and hearing, sign language instructors, doctors of optometry and registered dietitians—among others—may be considered qualified personnel to provide early intervention services that would meet the developmental needs of an infant or toddler with a disability and the infant or toddler's family. Finally, the Department determined that it was unnecessary to add the qualifying phrase to "special educators" because State standards already exist for that profession.

In response to the request for clarification, a special educator is an individual who has been certified by the Department of Education to teach students with disabili-

ties in the school system. An early interventionist is an individual who is not certified as a teacher but has the qualifications in § 4226.55. The early interventionist provides instruction and assistance in designing learning environments and activities in the home and community to promote the acquisition or enhancement of skills, cognitive processes and social integration on the part of an infant or toddler with a disability.

A mobility specialist is an individual who provides support and training to children or adults with visual impairments to enable them to navigate through their environment. The services provided by a mobility specialist are included in the definition of "vision services." A physical therapist is an individual who addresses the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development and effective environmental adaptations.

The Department made some technical changes to the definition to correct grammar and to conform the definition to changes made to other definitions.

Definition of "evaluation."

Two commentators noted that the definition of "evaluation" differs from the definition in 34 CFR 303.322(b)(1) (relating to evaluation and assessment) by omitting the phrase "by appropriate qualified personnel" and 34 CFR 303.322(c)(1) by omitting the clause "be conducted by personnel trained to utilize appropriate procedures." They suggested that the language should be the same.

Response

The Department added the phrase "by qualified personnel" to the revised definition but omitted "appropriate" as redundant of "qualified." Section 303.322(c)(1) of 34 CFR is not a definitional section but imposes a substantive requirement, which is in § 4226.62(b)(1)(i) (redesignated as § 4226.61(b)(1)(i)) (relating to MDE).

The Department revised the definition to include eligibility of at-risk children for tracking services, which was inadvertently omitted from the proposed rulemaking, and to simplify the definition by replacing the cross reference to another definition with the phrase "for tracking or early intervention services." The criteria for "initial and continuing eligibility" for early intervention services in § 4226.22 include a determination of the child's status in the developmental areas. Section 4226.30(a) (redesignated as § 4226.25(a)) (relating to at-risk children) specifies that the child is to be identified through the initial MDE as an at-risk child. As set forth in § 4226.62(b) (redesignated as § 4226.61(b)), the MDE must include a determination of the child's functioning in each developmental area. Therefore, reference to this determination in the definition of "evaluation" was redundant and also deleted.

Definition of "family training, counseling and home visits."

One commentator recommended that this definition be revised to be consistent with 34 CFR 303.12(d)(3). Two other commentators suggested that special educators be included in the definition. They also suggested that the final-form rulemaking more specifically describe the components of training, including resources, available to assist the family in understanding the special needs of the infant or toddler with a disability. Another commentator recommended that the three terms be defined separately because they have different meanings.

Response

The difference between this definition in the proposed rulemaking and the definition in 34 CFR 303.12(d)(3) was

the omission of the phrase "as appropriate." The Department added the phrase but altered its placement in the sentence from that in 34 CFR 303.12(d)(3) based on the Department's interpretation of the definition, to clarify that the type of provider that is appropriate to deliver the specified services will vary depending on the needs of the family. The Department did not define the three terms separately because the services provided assistance to the family in understanding the needs of and enhancing the development of the infant or toddler—are the same; the specific components of the services delivered will vary depending on the type of provider that delivers the services. The Department did not incorporate special educators or specific training and resources for families. The phrase "other qualified professionals" in the definition includes qualified special educators. The Department determined that it is inappropriate to specify training components and resources in the rulemaking, since those will vary with the needs of each family and over time.

Definition of "health services."

Two commentators stated that subparagraph (i) of the definition of "health services" was inconsistent with 34 CFR 303.13 (relating to definition of "health services") because it limited the availability of health services to the times when an infant or toddler with a disability is receiving medical services. They recommended that the definition be revised to be consistent with 34 CFR 303.13. Another commentator recommended that subparagraph (i)(B) not be limited to "consultation by physicians" but should include other health care practitioners such as optometrists.

Response

The Department agrees with the first comment and made the change as recommended, as well as a corresponding grammatical correction. The Department also changed the organization of subparagraph (i) to conform to subparagraph (ii) and made technical revisions to the definition to conform to changes made to other definitions.

The Department did not amend the list of services in subparagraph (i) because it is not intended to be an exhaustive list of health services. Consultation with health care practitioners other than physicians could appropriately be considered a health service as defined, depending on the needs of the particular infant or toddler with a disability. In addition, consultation by other health care practitioners could appropriately be considered within the scope of another early intervention service (for example, vision services), depending on the reason for the consultation.

Definition of "IFSP—individualized family service plan."

One commentator stated that the definition of "IFSP" varies from the definition in the Federal regulation and suggested that it be revised to be consistent with the Federal regulation or the variation be explained.

Response

The Department did not make the recommended change because the definition is identical to the definition in 34 CFR 303.340(b) (relating to IFSPs—general), which is cross referenced in 34 CFR 303.14 (relating to definition of "IFSP"). Section 303.14 of 34 CFR defines "IFSP" as "the individualized family service plan, as that term is defined in § 303.340(b)." Rather than merely spelling out the acronym in the definition and cross referencing to another definition, the Department combined both definitional sections in 34 CFR 303.340(b) and 303.14 into one

definition. The Department made technical changes to the definition to conform the definition to changes made to other definitions.

Definition of "infant and toddler with disabilities" (redesignated as "infant or toddler with a disability").

One commentator stated that the definition of "infant and toddler with disabilities" eliminates language relating to the methods of measuring developmental delays contained in section of IDEA (20 U.S.C.A. § 1432(5)), and suggested it be revised to be consistent with the Federal definition.

Response

After additional review, the Department revised the definition to refer to the eligibility criteria in § 4226.22 to avoid repetitive and therefore potentially confusing references to eligibility criteria. In addition, the revision clarifies that the term as used in the final-form rulemaking means only children who have been determined eligible for early intervention services and does not include children referred for assessment and evaluation or at-risk children (both of which groups are defined elsewhere). The revised definition also resolves the issue raised in the comment because § 4226.22 makes clear that eligibility determinations must be made using appropriate diagnostic instruments and procedures.

The Department retained the phrase "under 3 years of age" rather than revising it to "from birth through age two," the language in 34 CFR 303.16(a) (relating to definition of "infants and toddlers with disabilities"), for clarity and conformity with the *Pennsylvania Code and Bulletin Style Manual (Style Manual)*. The Department also made a technical correction by changing the defined term to the singular form. The Department replaced the terms "child," "eligible child" and "infant or toddler" throughout the final-form rulemaking where the terms were used to refer to a child who has been determined eligible for early intervention services.

Definition of "legal entity" (deleted on final-form).

One commentator requested clarification of the role of the State if the definition of "legal entity" sets forth the role of the county, since the State would appear to be included in the term as defined.

Response

For the reason explained in the response to the definition of "county MH/MR program," the Department deleted the term "legal entity" and the requested clarification is therefore not needed. The Department replaced the term "legal entity" with "county MH/MR program" throughout the final-form rulemaking.

Definition of "location."

The Department made a technical change to the definition of "location" by inserting the phrase "or is" to account for those infants and toddlers with disabilities whose IFSPs are being reviewed and who are therefore already receiving services.

Definition of "MDE" (deleted on final-form).

Two commentators suggested the term "MDE" be defined beyond defining the acronym.

Response

After considering the recommendation of the commentators, the Department decided to delete "MDE" as a defined term. The components of an MDE are in § 4226.62 (redesignated as § 4226.61). As a review of that section shows, the term "MDE" is not easily suscep-

tible to definition. Attempts to define the term would result in either an overly simplistic, incomplete and potentially confusing definition or one that inappropriately includes substantive requirements. Rather than risking either possibility, the Department has chosen the alternative of deleting the term from § 4226.5 and cross referencing to redesignated § 4226.61 when the term "MDE" appears in the final-form rulemaking.

Definition of "medical services only for diagnostic or evaluation purposes."

The Department added a definition of "medical services only for diagnostic or evaluation purposes" because it is listed in the definition of "early intervention services" and was inadvertently omitted from the proposed rulemaking.

Definition of "multidisciplinary."

Two commentators suggested that the definition of "multidisciplinary" be changed to specify that service coordination is not one of the two disciplines or professions that comprise "multidisciplinary." Several other commentators raised the same issue in commenting on § 4226.62 (redesignated as § 4226.61).

Response

The definition of "multidisciplinary" mirrors the definition in 34 CFR 303.17. The Department is unaware of any Federal or State law requirement that two professions or disciplines, in addition to service coordination, participate either in evaluation and assessment activities or in the development of the IFSP. The Department is therefore unwilling to impose this requirement and did not change the definition. Nonetheless, the definition does not preclude more than one professional other than the service coordinator from participating in either the evaluation and assessment of, or development of the IFSP for, a particular infant or toddler with a disability.

The Department made a technical change to the definition to correct a grammatical error.

Definition of "native language."

Two commentators recommended that the definition of "native language" be revised to state "parent's native language or child's native language" to account for those situations in which the parent's and the child's native language is not the same, such as when a deaf child is born to hearing parents.

Response

The sections of the final-form rulemaking in which the term "native language" appears (for example, § 4226.63 (redesignated as § 4226.62) (relating to nondiscriminatory procedures), § 4226.72(d) and § 4226.97 (relating to prior notice, native language) (redesignated as § 4226.95 (relating to prior notice))) address communication with parents, not service delivery to the child. Therefore, the Department determined that it is unnecessary to modify the definition, which is based on 34 CFR 303.401(b) and 303.403(c)(3) (relating to definitions of consent, native language and personally identifiable language; and prior notice, native language). Nonetheless, the Department has highlighted as a training issue the need to communicate with a deaf child in the language used by the child, including sign language.

The Department made three technical corrections to the definition. It changed "an eligible child" to "a child" to clarify that the native language requirements apply not only to children and families that have been determined to be eligible for early intervention services but also to children and families referred for services. The Depart-

ment also deleted the last sentence, which imposes the same substantive requirements set forth in § 4226.95(d)(1) and was inadvertently included in the definition in the proposed rulemaking. Finally, the Department made a grammatical correction by changing "shall be" to "is," since this is a definitional section and is not intended to impose a substantive requirement, as use of "shall be" connotes.

Definition of "natural environments."

The Department received four comments to the definition of "natural environments." Two commentators noted that some children require services in specialized settings, which may function as a natural environment for those children. They suggested that language be added to the definition to make clear that a natural environment may be a school or other program for the deaf. One commentator suggested that the definition could be more clear. One commentator stated that the language was too limiting and recommended adding the phrase "to the maximum extent appropriate."

Response

The definition of natural environments mirrors the definition in 34 CFR 303.18. The Department recognizes that a child who is deaf or hard of hearing may appropriately receive services in a school or program designed for children who are deaf but does not agree that the setting would be a natural environment. Therefore, the Department did not add the suggested language to the definition.

The phrase "to the maximum extent appropriate" is not definitional and is therefore not included in this paragraph. The substance of the requirement in this phrase is in § 4226.75(a) (relating to implementation of the IFSP).

The Department added the explanatory clause from 34 CFR 303.12(b) to provide additional guidance in interpreting the meaning of the term. The Department also corrected a grammatical error.

Definition of "nutrition services."

One commentator suggested that the terms "feeding skills and feeding problems" be deleted from the definition of "nutrition services" because self-feeding is an activity of daily living appropriately addressed by occupational therapists and swallowing examinations and therapies are provided by speech-language pathologists.

Response

The Department did not make the recommended change. Feeding skills and feeding problems are included as "nutrition services" in 34 CFR 303.12(d)(7)(i)(C) and may therefore not be deleted. Nonetheless, self-feeding as an activity of daily living is also encompassed within the definition of "occupational therapy" in this section and swallowing examinations and therapies are explicitly included in the definition of "speech-language pathology services" in this section.

The Department made technical corrections to the definition to avoid inconsistency with the format of similar definitions in this section and to conform the definition to changes made to other definitions.

Definition of "occupational therapy."

One commentator observed that the definition of "occupational therapy" does not reflect the need to address family concerns, priorities and resources, which are essential for the child's development, and recommended that the definition be revised accordingly.

Response

The need to address family concerns, priorities and resources is a requirement that applies to all services, as set forth in § 4226.62(c)(1) (redesignated as § 4226.61(c)(1)). Therefore, the Department did not revise the definition of "occupational therapy" as recommended. The Department made some technical changes to the definition, to correct grammatical errors and to conform the definition to changes made to other definitions.

Definition of "parent."

One commentator recommended that a foster parent be explicitly identified as a permissible surrogate parent in the definition of "parent." Two commentators suggested that the definition should make clear that no employee of a private as well as a public foster care agency may be considered a parent. Other commentators stated that the definition of "parent" should include foster parents in the circumstances permitted by 34 CFR 303.19(b) (relating to definition of "parent"). Several additional commentators also raised the status of foster parents in addressing § 4226.105 (redesignated as § 4226.96) (relating to surrogate parents).

Response

The Department revised the definition of "parent" to refer explicitly to a foster parent as a permissible surrogate parent. It also included "legal custodian" in the definition, since "guardian" and "legal custodian" are not legally synonymous. This revision also clarifies that a county children and youth agency may not be considered a "parent" when it is the legal custodian of a child, which was the intent of the reference to "county agency" in the proposed rulemaking. Finally, the Department added a parenthetical phrase to explain the meaning of "a person acting as a parent of a child."

The Department gave careful consideration to the many comments that addressed the status of foster parents. The Department acknowledges and values the contribution of foster parents to the lives of children in substitute care and the important role foster parents often play in the delivery of early intervention services to infants and toddlers with disabilities. At the same time, the legal status of foster parents under State law is grounded on the premise that the foster parent/child relationship is by definition temporary and subordinate to the legal relationship between the county agency and the child as well as, more important, the ongoing parental relationship with a child placed in substitute care. The Department is reluctant to inject ambiguity into the legal status of foster parents under State law by conferring on particular foster parents the status of "parent" under even the limited circumstances allowed under the Federal regulation.

Recognizing the invaluable role that foster parents can play in the lives of children referred or eligible for tracking or early intervention services and to encourage that role, the Department has determined that the competing interests are best resolved by loosening the restrictions on allowing a foster parent to serve as a surrogate parent, with the approval of the custodial county children and youth agency. The Department believes that permitting foster parents to serve as surrogate parents will enable them to participate in the decisionmaking process for and pursue procedural protections on behalf of children in their physical care without causing confusion about their legal status under State law. Therefore, the Department did not revise the definition of "parent" to include foster parents, but revised § 4226.105 (redesignated as § 4226.96).

Definition of "personally identifiable information."

One commentator requested clarification of what is included in the definition of "personally identifiable information" and where it is located in the child's file.

Response

As specified in the definition, "personally identifiable information" is information that would make it possible to identify the child or family. The definition includes a nonexhaustive list of examples of this information. The information might be located anywhere in the child's record, depending on the procedures and practices of the county MH/MR program or provider. For example, demographic information on the child and family might be maintained in one section of the record, and evaluation reports and IFSPs, which are also likely to include the name or other identifying characteristics of the child or family members, might be maintained in a different section of the record. The nature of the information, not the location in the child's record, determines whether it is "personally identifiable information."

The Department made two technical corrections to the definition, to correct grammatical and punctuation errors and to avoid inconsistency within the definition.

Definition of "physical therapy."

One commentator recommended that "perceptual . . . development" be deleted from the definition of "physical therapy" because "perception is not a matter of physical functioning" within a physical therapist's scope of practice but is an occupational therapy service. Another commentator suggested including "family support for caregiver-child interaction" in the definition to promote family-centered care and child development.

Response

The Department did not make the recommended changes. The Department does not agree that enhancement of perceptual development, in conjunction with motor development, is inappropriately a physical therapy service. The definition of "physical therapy" in 34 CFR 303.12(d)(9) does not recognize family support and the Department agrees that it should not be included in the definition of "physical therapy."

The Department made some technical changes to the definition to enhance consistency with similar definitions and to conform the definition to changes made to other definitions.

Definition of "referral."

Two commentators suggested that "referral" be defined, with one of these commentators requesting the Department to clarify whether the term means contact with the family or a contact made on behalf of the family.

Response

The Department agrees and added a definition of "referral" as suggested. The definition clarifies that a referral is a contact made on behalf of the child and family.

Definition of "service coordination (case management)."

After additional internal review, the Department made several changes to the definition of "service coordination." First, it added a phrase to clarify that the activities to be carried out by a service coordinator are those specified in § 4226.52 (relating to service coordination activities). Second, it changed "an eligible child" to "a child" because service coordinators are assigned to children and families upon referral, not only after a child has been determined

eligible for tracking or early intervention services. Finally, it made three technical corrections to avoid incorrect or unnecessary wording and inconsistency with other regulations and to correct punctuation.

Definition of "social work."

The Department added a definition of "social work" because it was inadvertently omitted from the proposed rulemaking.

Definition of "special instruction."

Two commentators recommended that the definition of "special instruction" be revised to specify that information conveyed during special instruction may be communicated through sign language or other forms of communication.

Response

The Department did not make the change as recommended. The definition of "special instruction" encompasses the use of language as needed to achieve the outcomes identified on the IFSP, to promote the acquisition of skills by and to enhance the development of all infants and toddlers with disabilities, including those who are deaf or hard of hearing. Special instruction is expected to be tailored to meet the individualized needs of the infant or toddler with a disability, as reflected on the IFSP in accordance with § 4226.74(1), (3) and (4) (relating to content of the IFSP). The Department determined that it is unnecessary to modify the definition to highlight particular disabilities.

The Department made several technical corrections to avoid inconsistency within the definition and with other regulations and to conform the definition to changes made to other definitions.

Definition of "tracking."

Two commentators suggested that a definition of "tracking" be added.

Response

The Department concurs and added a definition of "tracking" as suggested.

Definition of "transportation and related costs."

One commentator asked what is included in the definition of "transportation and related costs." Another commentator asked whether the provision of transportation and related costs is included in service coordination or is the responsibility of the provider.

Response

The definition identifies the types of costs that are included in "transportation and related costs." "Transportation and related costs" is not included in § 4226.52 and so is not a service coordination function. Although providers may bill for this service, it is not expected that the service will need to be provided generally or as a matter of routine, since most early intervention services are provided in the natural environment. The need for transportation and related costs, as with other early intervention services, should be determined by the IFSP team.

The Department made several technical corrections to the definition to avoid redundancy, correct a grammatical error and conform the definition to changes made to other definitions. The Department also changed "early intervention services" to "another early intervention service" to avoid confusion.

Definition of "vision services."

One commentator asked whether "vision services" includes a teacher of the visually impaired who is not certified to provide mobility and orientation services.

Response

The definition of "vision services" does not address the types of providers that may deliver the services. As with all other early intervention services, for an individual to be able to provide vision services, that person must be "qualified" as defined in the final-form rulemaking. The Department made two technical changes to the definition to avoid inconsistency with similar definitions.

Section 4226.5. Definitions—Other comments.

The Department received several additional comments recommending that a number of undefined terms be included in the definitions sections. Two commentators suggested that "communication" be defined to specify that communication may include sign language. These two commentators also suggested that a definition of "sign language instructor" be included, specifying minimum qualifications, because no other State regulations establish credentialing for sign language or sign language instruction.

Some commentators recommended that "early interventionist" be defined. One commentator made the same recommendation for "service coordinator."

Response

The Department did not add the definitions as recommended. The final-form rulemaking as a whole embodies the principle that all services must be directed toward meeting the individualized developmental needs of infants and toddlers with disabilities, including infants and toddlers who are deaf or hard of hearing. The Department believes it is unnecessary to prescribe communication with these infants and toddlers by way of a separate definition of "communication."

Establishing qualifications and scope of practice standards for professions and disciplines that are not limited to the early intervention program but reach across program lines does not lie within the authority of the Department. The Department is unwilling to codify standards for early intervention providers in regulation instead of appropriate, generally applicable requirements from the licensing and credentialing authority. Therefore, it did not add a definition of "sign language instructor."

In response to the comments requesting that a definition of "early interventionist" and "service coordinator" be added, as well as comments expressing general confusion over the two provider types, which are addressed in more detail in the responses to the comments to §§ 4226.52 and 4226.54, the Department revised and clarified the respective roles and responsibilities of these two provider types in those sections of the final-form rulemaking. The Department determined that revising those sections was a better approach to clarifying roles and responsibilities than adding definitions, particularly because none of the other "qualified personnel" listed in the definition of "early intervention services" is included in the definitions.

Section 4226.6. Waiver of regulations.

Many commentators recommended that the Department include a procedure for requesting a waiver of specified regulatory requirements to accommodate situations in which a county MH/MR program is unable to comply with a requirement despite best efforts to do so. The commentators focused particularly on the requirement that the initial multidisciplinary evaluation be conducted by personnel independent of the service provider in § 4226.62(a)(2) (redesignated as § 4226.61(a)(2)).

Response

The Department agrees with the commentators and has determined that special circumstances might justify the waiver of other regulatory requirements as well. Therefore, the Department added this new section, which specifies the circumstances under which it may exercise its discretion to waive a regulatory requirement as well as the information that must be submitted in support of a waiver request. As the language of the regulation makes clear, only county MH/MR programs may submit waiver requests. The Department expects that in the course of its monitoring duties, as specified in § 4226.27 (relating to monitoring responsibilities), a county MH/MR program will assess whether or not special circumstances exist in the county that warrant submission of a waiver request. The Department will not entertain applications under this section from individual provider agencies.

Section 4226.12. Waiver funds (redesignated as "Medicaid waiver funds").

Four commentators stated that counties do not have complete control over whether waiver funds can be expended because use of waiver funds depends on eligible children being identified and their parents agreeing to participate in the waiver. They recommended clarifying the counties' obligation by adding language at the end of the paragraph such as "to the extent that eligible services and eligible children can be identified, and the children's parents consent to participate in the waiver." One commentator suggested that because the waiver is a limited funding source, this section should be deleted.

Response

The Department concurs with the first comment and made the recommended change. The Department agrees that this is a limited funding source. Throughout the development of the waiver program, however, the Department received input recommending that the final-form rulemaking specify the availability of this funding source. In addition, the Department believes that the obligation of the counties to use waiver funds when those funds are available should be set forth in final-form rulemaking so that those funds are used to the maximum possible extent. Therefore, the Department retained this section.

The Department made a technical change by deleting the phrase "allocate and" because the Department, not the county MH/MR programs, allocates funding. The Department also added the word "Medicaid" to the heading of this section to avoid confusion in light of the addition of § 4226.6 (relating to waiver of regulations). The Department made other technical changes to conform this section to other changes made in the final-form rulemaking.

Section 4226.13(a). Nonsubstitution of funds (redesignated as "Payor of last resort").

One commentator stated that the wording of the subsection implies that after private insurance is billed, early intervention funds will be used only in the interim until the insurance payments begin. Two commentators suggested that funding sources be listed in the order in which they can be accessed, since the intent of the subsection was unclear. Two other commentators stated that counties should not be held accountable for not using funds that are not accessible because the family did not consent, with one suggesting the addition of the clause "so long as the use of those funds is without cost to the families, and the families have consented."

Response

The Department revised the heading of the section and the language in subsection (a) to clarify that the intent of this section is to codify the Federal requirement (at 42 U.S.C.A. § 1440(a) and 34 CFR 303.527(a) (relating to payor of last resort)) that the early intervention system be the payor of last resort and that other available public and private funding sources must be used to pay for services before early intervention funds are expended. If parental consent is needed to access a funding source but the family does not consent to the use of that funding source, then the funding source is not available and need not be used before early intervention funds may be used.

The Department is unwilling to impose requirements on the use of other funding sources that are not imposed by Federal law and therefore did not add the recommended language. To underscore that this subsection sets forth the same requirements imposed by Federal law and should be interpreted consistent with Federal law as it currently exists and as it may be modified in the future, the Department added the introductory clause "unless otherwise permitted or mandated by Federal law."

The Department revised the second sentence of this subsection and redesignated it as subsection (c) to clarify the intent of the sentence that services may not be denied or delayed because another funding source, including Medicaid, is unavailable.

Section 4226.13(b).

One commentator stated that parents should not be compelled to use private insurance to pay for services. Another commentator suggested adding the language "after being informed of their rights to refuse consent" to emphasize the voluntary use of private insurance. The same commentator suggested adding the phrase "but are not limited to" to introduce the examples of financial losses and recommended additional examples of losses. Other commentators recommended adding language that clarifies that parents cannot be required to apply for Medicaid to receive early intervention services. One commentator suggested that the Department clarify how families will not suffer financial losses if they volunteer to use private insurance. One commentator suggested that language be added to explain that services may not be delayed while securing funding or adjusted to reflect available funding sources. Three commentators raised the same issue in commenting on § 4226.14 (relating to documentation of other funding sources) or on the financial management sections generally.

Response

As previously noted, Federal law requires that all other available public and private funding sources be exhausted before early intervention funds are expended. Thus, available private and public funding sources, including commercial health insurance, must be used to meet the costs of early intervention services as long as the parent consents and the use does not result in a cost to the family.

Because the comments reflected general confusion about the purpose and intent of this subsection, the Department revised the language of the introductory paragraph to convey the meaning of the subsection more clearly and concisely. The Department added the clause "unless otherwise permitted or mandated by Federal law" to emphasize the intent that this subsection be interpreted consistent with Federal law as it currently exists and as it may be modified in the future. To clarify that parental consent must be obtained to use private health

insurance, the Department used the phrase "with the consent of the family." If the family refuses consent, then private insurance is not available and may not be accessed. As recommended, the Department added the phrase "but are not limited to" to introduce the types of costs, to clarify that the itemized list is not exhaustive but merely illustrative and therefore did not amend the list of examples.

The Department finds that access and use of Medical Assistance (MA) funds in this Commonwealth results in no cost to or potential negative impact on children or families. Therefore, although parents are not required to apply for MA for infants and toddlers to receive early intervention services, they should be informed of and encouraged to use all financial resources available to them. The Department is concerned that county MH/MR programs or service providers or agencies not be dissuaded from informing families of all available funding options, including MA, for fear of a finding of noncompliance. Therefore, the Department did not add the recommended language regarding application for Medicaid. As previously noted, the Department revised the second sentence of subsection (a) and redesignated it as subsection (c), which clarifies that services may not be denied or delayed because another funding source, including Medicaid, is unavailable. This clarification addresses the concern raised by these commentators.

Section 4226.14. Documentation of other funding sources.

Several commentators submitted comments to this section, many of which echoed the comments to § 4226.13 (relating to nonsubstitution of funds (redesignated as payor of last resort)). For example, a few commentators emphasized that other funding sources may not be used unless the parent consents and the use results in no cost to the family and that services should not be delayed because other funding sources are unavailable. They suggested adding language in this section to specify these conditions. One commentator suggested removing "private funding" as a mandatory funding source.

Some commentators questioned the meaning of "all other private and public funding sources" and who is responsible for exhausting the funding. Two commentators expressed concern that this section was intended to require parents to exhaust their personal resources and objected to having to do so. Two commentators recommended that parents should be provided with written details of advantages, disadvantages of and restrictions on or the implications of using the various funding sources. One commentator suggested that the Department prescribe a process to make families aware of various funding sources.

One commentator suggested that the Department specify a time limitation for retaining the permanent file in subsection (a). The same commentator noted that the language in subsection (b) implied that the Department formally approves the county procedures but did not specify the criteria for approval. The commentator recommended that the approval criteria be specified or, if there is no formal approval process, that the phrase "approved by the Department" be deleted.

Response

The Department addressed the comments identified in the first paragraph of the comment summary in its responses to § 4226.13 and will not repeat those responses here. Nonetheless, these comments as well as the others reflect considerable confusion over the purpose and intent of this section. This section is not intended to

establish a substantive requirement in addition to those set forth in § 4226.13 but is intended only to require that the county MH/MR programs and service coordination providers maintain documentation of compliance with § 4226.13. The Department has reorganized and amended the language of this section to clarify that intent.

The Department added subsection (a) to replace proposed subsection (b) to specify more clearly that the county MH/MR programs must develop procedures to comply with § 4226.13. The Department expects that these procedures would include the means by which parents are informed of potential funding sources and of the conditions that might apply to each. The Department will review compliance with this subsection in the course of its monitoring review of the county MH/MR programs. Therefore, it omitted any reference to Department approval of the procedures from the subsection.

The Department revised redesignated subsection (b), requiring that the service coordinator maintain documentation that attempts have been made to exhaust other available funding sources, as required in § 4226.13, to clarify that the documentation requirement must be read in conjunction with the substantive requirement set forth in § 4226.13.

As recommended, the Department specified that the documentation must be maintained in accordance with the time periods in § 4226.36(d) and (e) (relating to child records). The Department also changed "child" to "infant or toddler with a disability" to conform the section to the changes made to the definitions of those terms.

Section 4226.15. Interim payments.

One commentator suggested including a specific timeframe rather than the phrase "in a timely fashion" in subsection (a) to improve clarity.

Response

The Department deleted the phrase "in a timely fashion" as redundant of "delay" and therefore unnecessary. "Delay" could vary depending on the needs of the child and the family as reflected on the IFSP. Timelines for service delivery are specified in § 4226.75(b).

After internal review, the Department made additional changes to this section to revise the language to be consistent within the section and with other sections by referring to "funding source" rather than other terms and by using the terms "infant or toddler with a disability" and "county MH/MR program." The Department also changed "shall" to "may" in subsection (a) to clarify that a county MH/MR program is not required to use State early intervention funds to make interim payments but that States funds are available for that purpose. In subsection (b), the Department changed "appropriate" to "responsible" to avoid ambiguity and changed "incurred" to "made" to correct improper usage.

Section 4226.21. Delegation of responsibilities (redesignated as "Nondelegation of responsibilities").

The Department reorganized and made other technical changes to this section to clarify that the county MH/MR program remains responsible for compliance with this chapter if it contracts with another agency. The Department also amended the heading to convey the intent of the section more accurately. Finally, the Department deleted the first sentence of redesignated subsection (a) as redundant and therefore unnecessary.

Section 4226.22(a). Eligibility for early intervention services.

One commentator questioned the basis for establishing 25% developmental delay and 1.5 standard deviations as the criteria for eligibility. Two commentators expressed concern that children who are delayed in only one area of development will not be eligible to receive early intervention services and stated that the eligibility criteria suggest that a child would be eligible for early intervention services only if the child's disability or delay resulted in the need for special education or related services. One commentator recommended that adaptive development be defined. One commentator expressly noted support for the 25% delay criterion.

Response

The eligibility criteria are based on research findings and best practices in early intervention as well as criteria that other State programs have established. The Department finds that the criteria are appropriate for identifying those children whose developmental needs may be met with early intervention services. The criteria do not require that children be delayed in more than one developmental area; nor do they require a determination that a child need special education or related services to be eligible for early intervention services.

The meaning of the term "adaptive development," as well as that of the other areas of development, is known within the professional community. Therefore, it is unnecessary to include a definition of an area of development, including adaptive development.

The Department made some technical changes to this subsection to correct syntax errors and to enhance organizational consistency within the subsection and with other sections in the final-form rulemaking.

Section 4226.22(b).

Four commentators stated that the language on informed clinical opinion was more restrictive than that in 34 CFR 303.300 (relating to State eligibility criteria and procedures) and recommended that the subsection be revised to mirror Federal law. One commentator suggested that examples of circumstances when no standardized measures are available or appropriate, and so would require "informed clinical opinion," would improve clarity. Another commentator expressed support for retaining the use of informed clinical opinion.

Response

The Department did not intend to limit use of informed clinical opinion to cases in which other diagnostic tools are unavailable or inappropriate. As specified in § 4226.62(b)(2) (redesignated as § 4226.61(b)(2)), informed clinical opinion must be a component of every evaluation that determines eligibility for early intervention services. The Department revised the language of the subsection to clarify that informed clinical opinion must guide and may be used in lieu of the use of standardized measures and other diagnostic tools.

After careful consideration of the suggestion to include examples of circumstances that would require informed clinical opinion because other diagnostic tools are unavailable or inappropriate, the Department finds that it would be nearly impossible to list all circumstances. Rather than imply a restriction on the use of informed clinical opinion by citing examples of circumstances in the final-form rulemaking, the Department believes that the determination should be left to the judgment of the

professionals who are working with the child. Therefore, it did not revise the subsection as suggested.

Section 4226.23. Waiver eligibility (redesignated as "Eligibility for Medicaid waiver services").

A number of commentators submitted comments to this section. One commentator recommended technical additions or changes to subsection (a), including: spelling out the acronyms ICF/MR and ICF/ORC in the introductory paragraph; clarifying the term "applicant and recipient"; and deleting the term "indefinitely" from paragraph (3)(iii). Another commentator suggested adding the phrase "with the parent's consent" to the introductory paragraph. A third commentator proposed inserting the words "and" and "or" following the paragraphs and subparagraphs to reflect the eligibility criteria more accurately and adding the word "qualified" before "professional" in paragraphs (2) and (3).

Commentators also asked how the waiver eligibility criteria were established and requested clarification of the basis for "more than two standard deviations below the mean" in paragraph (1)(i), "slightly" in paragraph (1)(ii), and "substantial functional limitation" in paragraph (3)(ii); questioned whether the concepts of independent living, economic self-sufficiency and self-direction appropriately apply to infants and toddlers and how they might be evaluated in the infant and toddler population; and suggested that the regulation clarify that only eligible services will be funded.

One commentator recommended that subsection (a)(1) be revised to include a "qualified professional," to reflect the approved waiver eligibility criteria. Another commentator proposed that this section be deleted and that § 4226.14 be renamed and revised to require that parents be informed of all funding options. One commentator stated that the form that parents must complete for the waiver program should be revised to promote clearer understanding of the parents' role in the program.

One commentator questioned use of the term "infant, toddler and family" in subsection (b) rather than "applicant or recipient," as in subsection (a), and recommended that either consistent terms be used in both subsections or the difference in meaning be explained.

Response

The Department concurs with and made the suggested technical changes identified in the first paragraph of the comment summary. Rather than adding a consent provision to this section, the Department included parental consent for enrollment in the Medicaid waiver program in § 4226.95 (redesignated as § 4226.92 (relating to parental consent)).

The Department agrees that the eligibility criteria as set forth in the proposed rulemaking did not accurately reflect the criteria that the Centers for Medicare and Medicaid Services (CMS) (formerly the Health Care Financing Administration) approved for the waiver program because the conjunctions between the paragraphs and subparagraphs were omitted. To address this issue and remain in conformance with proper regulatory format as prescribed in the *Style Manual*, the Department reorganized subsection (a) into two subsections and added clauses to introduce each of the subparagraphs in redesignated subsection (b). In reorganizing the section in this manner, the Department did not in any way alter the substance of the eligibility criteria from the proposed rulemaking. As a result of the reorganization, subsection (b) in the proposed rulemaking has been redesignated as subsection (c).

In subsection (a)(2) and (3) (redesignated as subsection (b)(1)(ii) and (2), respectively), the Department clarified that the certifying professional is a "qualified professional" as defined in 42 CFR 483.430(a) (relating to condition of participation: facility staffing). This specification, which was inadvertently omitted from the proposed rulemaking, is necessary to conform to the Federally approved eligibility criteria. The Department did not make a similar change to subsection (a)(1) (redesignated as subsection (b)(1)(i)), as recommended, because the approved waiver requires that a psychologist, certified school psychologist or physician make the certification required in that subparagraph.

In response to the requested clarifications of and suggested changes to the eligibility criteria, the Department is unable to revise the criteria outlined in this subsection. The criteria were developed in negotiations with the CMS for approval of the waiver and were a condition of that approval. The source of the criteria is the ICF/MR or ICF/ORC level of care criteria in this Commonwealth, set forth in §§ 6210.62 and 6210.63 (relating to level of care criteria; and diagnosis of mental retardation); the criteria are the same as for all other waiver programs administered by the Office of Mental Retardation, modified somewhat to apply to the infant and toddler population. The few modifications to the criteria were also approved by CMS. The Department recognizes that the areas of independent living, economic self-sufficiency and self-direction do not apply to infants and toddlers, so that an infant or toddler must have substantial functional limitation in three of the four remaining areas of major life activities to be eligible for the waiver program.

A provision specifying that only eligible services may be funded through the waiver program has been added to § 4226.12. The Department did not delete this section or combine it with § 4226.14 because the purpose of this section is to set forth the eligibility criteria for the waiver program, not prescribe that parents should be informed of the program. The Department revised the section heading to clarify that purpose.

No section of the regulations requires that a particular form be used for waiver enrollment. Therefore, the Department did not address the comment about the form in the final-form rulemaking. In response to the comment, the Department will review the existing form to determine if revision is needed.

The Department made some technical changes to correct grammar and punctuation errors and to conform the section to other changes made in the final-form rulemaking.

Section 4226.24. Comprehensive child find system.

The Department received a number of comments to this section. A few commentators noted that the use of the term "ensure" throughout the section obligates the county MH/MR program to undertake activities and produce outcomes that cannot always be controlled; that the clause "and which children are not receiving services" in subsection (a)(2) is not included in 34 CFR 303.321(b)(2) (relating to comprehensive child find system) and that it is unclear how the county can determine which children should be but are not receiving services; that it would be helpful to specify strategies to structure and improve child find activities in the final-form rulemaking; and that the responsibilities for child find should be performed with the assistance of the State. One commentator asked whether child find is a service coordination func-

tion and, if not, who is responsible for child find activities. The same commentator asked whether a specific child find process is recommended. Another commentator suggested that the coordination required in subsection (b) implies that the county MH/MR program is expected to use the identified programs and agencies as county volunteers.

As noted in the response to comments to § 4226.5, two commentators recommended that "referral" be defined. They also suggested that the Department specify criteria for establishing when a referral is "received" in subsection (f) (redesignated as subsection (g)). One commentator suggested that "as soon as possible" in subsection (f)(1) (redesignated as subsection (g)(1)) is vague and recommended including a maximum time frame for assigning a service coordinator after receipt of a referral. Several commentators stated that the 45-day timeline in subsection (f)(2) (redesignated as subsection (g)(2)) is inconsistent with 34 CFR 303.321(e) and suggested that the paragraph be reworded to be consistent with 34 CFR 303.321(e). Some commentators proposed that the requirement for a public awareness program in 34 CFR 303.320 (relating to public awareness program) be included in the final-form rulemaking. Two commentators suggested the State pass legislation that would include the identification of all deaf and hard-of-hearing infants and toddlers in the child find system.

Response

The county MH/MR programs are responsible for developing local child find systems that comply with the requirements of this chapter. Therefore, the term "ensure" is appropriate and the Department did not modify the language as suggested. In assessing county compliance, the Department will take the voluntary nature of parental participation in the program into account.

The Department changed "children" in subsection (a)(2) to "at-risk children and infants and toddlers with disabilities" to conform the language to the revised definitions of those terms. This revision clarifies that the obligation in this paragraph applies to children who have been determined eligible for tracking or early intervention services. The paragraph accurately reflects the Department's intent that county MH/MR programs are responsible for monitoring whether at-risk children are or are not being tracked and whether infants and toddlers with disabilities are or are not receiving needed services. Therefore, the Department retained the second clause of this paragraph, with a minor editorial change.

The child find system is a county-wide initiative, not one directed to a particular child. Therefore, child find is the responsibility of the county MH/MR program, in conjunction with the local interagency coordinating council, not a service coordination function. The Department provides assistance in child find activities by distributing Statewide materials relating to the child find system and providing data to counties to enable them to identify potentially eligible children. Use of the data to identify children is ultimately the responsibility of the county MH/MR programs. Strategies, ideas to improve and specific processes for child find activities are not appropriately included in rulemaking but are addressed on a Statewide basis by Early Intervention Technical Assistance (EITA), the Statewide training and technical assistance system for early intervention, which is another example of the assistance the Department offers to county MH/MR programs in their child find activities.

The Department of course does not expect that the agencies and programs listed in subsection (b) will be-

come the volunteers of the county MH/MR program. Nor does the Department anticipate that the county MH/MR program will meet resistance in its coordination efforts, since each of the identified programs has its own mandate to refer children to appropriate programs, including the county MH/MR program. Nonetheless, recognizing that the county MH/MR program cannot ensure that other programs will cooperate in coordinating efforts, the Department revised the language in this subsection from "shall ensure that the child find system is coordinated" to "shall coordinate the child find system," thereby focusing on the actions of the county MH/MR program rather than on the other agencies. The Department will take the degree of cooperation of the other agencies into account in assessing county compliance.

The Department added a definition of "referral" in § 4226.5. The definition clarifies that referrals may be made orally or in writing. Although each county MH/MR program must adhere to the definition by accepting both oral and written referrals, the mechanism for receiving referrals varies by county. The Department determined that specifying criteria for what constitutes "receipt of a referral" would unnecessarily remove the flexibility the counties need to design their referral systems to meet local needs.

Neither Federal law nor the act requires that a service coordinator be assigned within a specified time period. See 34 CFR 303.321(e)(1). The Department believes that the existing language affords counties flexibility to assign service coordinators consistent with the needs of the referred child.

The Department revised the language on the 45-day timeline in subsection (f)(2) (redesignated as subsection (g)(2)) because it agrees that the language in the proposed rulemaking inadvertently suggested that the IFSP need not be completed within 45 days. As revised, the paragraph clarifies that within the 45-day time period, the county MH/MR program must either complete the MDE and the IFSP for an infant or toddler with a disability or complete the MDE and a tracking plan for an at-risk child.

The Department, not the county MH/MR program, is responsible for implementing a public awareness program. Since the final-form rulemaking applies to the county MH/MR programs and to service providers and agencies, the requirements for a public awareness program are not included in the final-form rulemaking.

The Department does not have the authority to pass legislation. That authority is vested exclusively in the General Assembly. Even without additional legislation, however, children who are deaf or hard of hearing are eligible for early intervention services and are included in the child find system.

The Department added the clause "unless otherwise permitted or mandated by Federal law" to subsection (e)(2) to ensure that the time frame for making a referral reflects Federal law as it currently exists in 34 CFR 303.321(d)(2)(ii) and as it may be modified in the future. The Department redesignated subsection (e)(3) as subsection (f) and made corresponding language changes to correct an error in organization. The Department also made other technical changes to correct grammar, punctuation and citation errors.

Sections 4226.25—4226.29 (deleted on final-form).

Many commentators submitted extensive comments on the screening procedures outlined in the proposed rulemaking. Several commentators requested clarification of

various provisions, whereas others recommended that the sections be deleted. Commentators questioned the purpose of the initial screening process; expressed concern that children and families could be determined ineligible for early intervention services without an evaluation; noted that the screening process varies across this Commonwealth; and suggested that parents should be informed in writing of their right to request an evaluation if the child is not referred for an evaluation as a result of the initial screening. One commentator requested clarification of the tracking system and suggested that the term be defined.

Response

After careful consideration, the Department has deleted these five sections in their entirety. The screening process is not a Federal or State law requirement. Screening is also not necessary to assure that eligible children are identified as early as possible, since § 4226.24(f)(2) (redesignated as § 4226.24(g)(2)) (relating to comprehensive child find system) mandates that the evaluation be completed and either the child be referred for tracking or the IFSP meeting be conducted within 45 days of referral. Instead, the screening process was established as a mechanism to identify children who clearly would not meet the eligibility criteria for early intervention services, prior to an extensive evaluation process. The Department did not intend to deprive any referred family of the opportunity to have a child evaluated.

The Department's experience with the screening process confirms the observations of some commentators that screening is conducted inconsistently from county to county. That experience also suggests that continuing the screening process is an inefficient and wasteful use of resources, since in many cases it merely inserts an additional step before the child is evaluated. At the same time, the Department acknowledges the concerns expressed by commentators that children and families might be determined ineligible as a result of the screening process. Although parents may challenge the outcome of the initial screening, any such challenge is likely to delay the evaluation.

After taking all of these considerations into account, the Department finds that, on balance, the risk of a child and family being inappropriately diverted from tracking or early intervention services outweighs the incremental benefits associated with maintaining the initial screening. Therefore, the Department has deleted these sections.

The Department added a definition of "tracking" in § 4226.5 and expanded § 4226.31 (redesignated as § 4226.26) (relating to tracking system) to specify the components of a tracking system.

Section 4226.30 (redesignated as § 4226.25). At-risk children.

One commentator suggested adding language that would permit a child identified as at-risk to be deemed eligible for tracking with parental consent, if the parent declines the initial MDE. One commentator recommended adding another category of at-risk children, those who have a family history of a genetically related condition such as deafness or hearing loss, to assure early detection of hearing loss in infants and toddlers with hearing parents. One commentator noted that citation to the Department of Health regulations that denote dangerous blood lead levels would improve clarity. One commentator suggested that a child identified as an at-risk child as a result of the initial screening process should also be eligible for tracking.

Response

The Department concurs with the recommendation to permit a child to be deemed eligible for tracking and added subsection (b). The Department finds that it is unnecessary to add children with a genetically related condition such as deafness or hearing loss to the categories of at-risk children. Pediatricians and family care practitioners routinely conduct comprehensive evaluations of a child's health, including hearing, and provide follow-up treatment and referrals. For this category of children, tracking is unlikely to provide any benefit beyond that provided by routine evaluation, treatment and referral services.

According to the Department of Health, it has not promulgated regulations establishing dangerous levels of lead poisoning because the lead prevention program is not a mandatory program. Instead, the Department of Health uses the lead levels published by the Centers for Disease Control and Prevention (CDC). The CDC issues publications on a periodic basis as the need arises, rather than according to an established schedule. Revised publications might or might not supersede the existing publication. The most recent CDC publication is *Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials* (November 1997), which was updated by *Managing Elevated Blood Lead Levels Among Young Children: Recommendations from the Advisory Committee on Childhood Lead Poisoning Prevention* (March 2002). Because the Department of Health has issued no regulations and the CDC guidelines are revised periodically, the Department retained the statutory language from the act rather than adding a citation as recommended. The CDC publications are, however, available on the CDC website at www.cdc.gov. The Department also did not amend the section to include the screening process because the initial screening provisions have been deleted from the final-form rulemaking.

As explained in the definitions section, the Department added the population categories of at-risk children to the definition of "at-risk child." Consistent with that revision to the definition, the Department amended and simplified this section by specifying that a child determined to be an at-risk child is eligible for tracking and by deleting the population categories. The Department also added a cross reference to § 4226.26.

Section 4226.31 (redesignated as § 4226.26). Tracking system.

One commentator suggested that "tracking system" be defined. The same commentator observed that the section includes no process for initiating a tracking system or procedures to ensure uniformity and recommended that the section specify processes and procedures for implementing a tracking system.

Response

As previously noted, the Department added a definition of "tracking" to § 4226.5. In addition, the Department revised this section (redesignated as § 4226.26) and deleted § 4226.32 (relating to contacting families) to combine all elements of the tracking system in one section. The revised section specifies the components of the system, including the frequency and method of contact. The revised section also establishes the use of a standardized tool during the contact, as a means of promoting uniformity throughout this Commonwealth. Finally, the revised section requires the county MH/MR program to maintain written documentation of all contacts.

Section 4226.32(a). Contacting families (deleted on final-form).

One commentator questioned how the 4 month frequency of contacts was determined and whether the county MH/MR program is required to make more frequent contact if recommended by the MDE team. The same commentator suggested that the section specify the substance of the contact. Three commentators recommended against prescribing the frequency of contacts because the frequency should be individualized according to family need. Three other commentators suggested adding a requirement for written documentation of all contacts. One commentator stated that e-mail should be added as a contact option or considered to be a written contact. Another commentator observed that the prescribed frequency is greater than current local practice and asked whether additional personnel will be provided.

Response

As noted in the response to comments to § 4226.31 (redesignated as § 4226.26), the Department deleted this section, incorporating the frequency and method of the contact from this section and prescribing the substance of the contact, as well as a requirement that contacts be documented in writing, in redesignated § 4226.26. Given the tender age of these children, delays must be identified as early as possible to maximize opportunities to enhance development and minimize future delays. For this reason, the Department finds that it is necessary to establish the minimum frequency of contact in regulation. The Department revised the frequency from 4 months to 3 months, recognizing that tracking in most counties is conducted by service coordinators, and 3-month contact has been a Department service coordination requirement since 1994. To ease administration and implementation of the tracking system, as well as avoid unnecessary disruption to families caused by repetitive and overlapping contacts, the Department revised the frequency of the tracking contract to coincide with the service coordination contract. Contacts with the child and family may be more frequent if recommended by the MDE team, with the concurrence of the family or less frequent if requested by the family.

Because, as noted, 3-month contact has been a Department service coordination requirement since 1994, the Department would expect that current practice reflects that requirement and therefore does not anticipate a need for additional personnel. The Department agrees that e-mail is an appropriate written contact if the county MH/MR program confirms that the family has e-mail capability and agrees to that method of contact.

Section 4226.33 (redesignated as § 4226.27). Monitoring responsibilities.

One commentator questioned how and why a county MH/MR program would monitor services provided in another state, as required by subsection (a). The same commentator noted that the phrase "complete monitoring of each early intervention service provider at least every 12 months" in subsection (c) is confusing and recommended that the language be revised to reflect that the monitoring is a reporting requirement.

Response

The need to monitor services in another state arises most often when a county MH/MR program contracts with a service provider or agency in a contiguous state to deliver early intervention services to an infant or toddler and family who live in close proximity to the contiguous state. In any case in which the county MH/MR program has contracted with an out-of-State provider, however, the

county MH/MR program is responsible for monitoring services provided by that provider.

After additional internal review, the Department revised subsection (a) to clarify that a county MH/MR program is responsible for monitoring those services that it provides directly as well as the services provided through contract with another service provider or agency. The Department also revised subsection (c) to conform to the revisions to subsection (a); to clarify that the monitoring is expected to be conducted on an ongoing basis but at least annually; and to require that documentation of the monitoring be maintained for at least 4 years. The Department also made technical changes to subsection (b) to conform to the revisions to subsection (a).

Section 4226.34. Community evaluations (redesignated as § 4226.28. Self-assessment reviews).

One commentator questioned how the 3-year cycle was established and noted that the statement "once in every 3 years" is awkward and should be reworded. Another commentator requested clarification on whether the evaluation required in this section is in addition to or instead of the standardized self-assessment process currently being used. The same commentator asked whether the term "legal entity advisory board" is the county MH/MR advisory board.

Response

The Department established the 3-year cycle for conducting the reviews because the families whose infants and toddlers receive tracking or early intervention services change over the course of 3 years because of the age limit of the program and family satisfaction with the program is a critical component of the self-assessment. The Department changed the sentence structure as recommended.

The Department changed the heading and wording of this section to clarify that the reviews required by this section are those currently being conducted. The term "legal entity advisory board" was changed to "county MH/MR advisory board."

After additional internal review, the Department added the phrase "including assessment of family satisfaction," which was inadvertently omitted from the proposed rulemaking, to clarify that this is an element of the self-assessment. The Department also revised the section to remove the requirement that county MH/MR programs have to develop the assessment system, since the Department has developed the tool to be used and procedures to be followed, which are already in place and being used by counties. As revised, the section requires county MH/MR programs to use the tool and procedures that the Department has developed rather than develop their own.

Section 4226.35. Training (deleted on final-form).

One commentator recommended deleting the terms "professional" and "paraprofessional" and the phrase "as approved" as unnecessary. The same commentator suggested that the section be revised to recognize other certification, licensing and registration authorities. Two commentators recommended that the specific number of annual training hours be included in this section. Other commentators asked what job category this section pertains to, what certification is available to paraprofessionals and whether the Department will develop a formal training format.

Response

The Department deleted this section because it was duplicative of the definition of "qualified" in § 4226.5.

Section 4226.37(a) (redesignated as § 4226.30(a)) (relating to annual training) specifies the required number of annual hours of training.

Section 4226.36 (redesignated as § 4226.29). Preservice training.

Commentators uniformly commended the Department for adopting both preservice and annual training requirements. One commentator observed that the training requirements seemed to be an attempt to compensate for inadequate qualification requirements elsewhere in the rulemaking. Several commentators submitted suggestions and others expressed some concerns.

Two commentators suggested that the format and time frame for completing preservice training be specified in this section. Other commentators recommended replacing "to encourage family preferences" in paragraph (4) with "will encourage family involvement at all levels" as more appropriate and deleting "(for all staff)" in paragraph (9) as redundant. Some commentators suggested additional training topics, including community resources; family-centered planning and service delivery; typical and atypical development; the nature of disabilities and their impact on families; cultural and social diversity; effective listening; and identifying family strengths and need. One commentator recommended competency-based training as a component or instead of preservice training, including the topics listed in this section in addition to others such as natural environments and IFSP developments and outcomes. One commentator questioned where training in childhood development and health is available to service coordinators.

Several commentators stated that it is inappropriate to require training in cardiopulmonary resuscitation (CPR), fire safety, emergency evacuation and first aid because most children receive services in community-based settings with their families present. Some commentators suggested that this requirement should apply only to direct care staff, and not, for example, to service coordinators, who provide facility-based services. Others noted concerns about issues such as staff liability, "do not resuscitate" orders and fire or evacuation plans in family homes. A few commentators recommended that topics such as family training in use of smoke detectors and evacuation plans might be more appropriate. Other commentators supported this training requirement, with one suggesting only that a reasonable time frame, such as 90 to 120 days, be allowed to complete the training.

A number of commentators who supported preservice training expressed concern that it will result in an additional cost by limiting the availability of staff to provide billable direct service hours. Several of the commentators requested that the Department consider a number of payment proposals, including funding for staff development. Two commentators noted that the preservice training requirement might deter interested persons from a job in the field. One commentator recommended that the final-form rulemaking specify who will pay for training.

Response

The Department concurs with the recommendation to specify a timeframe for completing preservice training, and added a requirement that the training be completed before personnel work alone with infants and toddlers or their families. Personnel may work with infants and toddlers or their families if supervised, before completing the required preservice training. The Department did not specify a training format or a number of training hours

because it expects that both will vary based on the experience of the individuals receiving training. An individual who has experience in early intervention services may receive preservice training through reading materials and videotapes, whereas an individual with less or no experience is likely to need more hands-on training for a longer period of time. Therefore, the Department determined that the specific format for and length of the training should be left to the judgment of the employer.

The Department changed the language in paragraph (4) to "encourage family involvement and consider family preferences" and deleted the parenthetical phrase "(for all staff)" in paragraph (9). The Department did not amend the list of topics for training because those are the topics that the Department believes personnel must be familiar with to be effective. Other topics, although not required, are not prohibited. Training and training materials in child development and health are available from a number of organizations, including EITA and the ECELS program of the American Academy of Pediatrics. The Department believes training in CPR, fire safety, emergency evacuation and first aid is good practice for personnel working in public programs regardless of site and therefore retained those topics. It revised paragraph (9) to allow up to 120 days from the date of hire to complete this training.

The county MH/MR programs are responsible for funding preservice training. They receive an annual training allocation from the Department. In addition, the Department allows the counties to take costs associated with staff training into account when developing rates with early intervention service providers or agencies. The Department has also established an extensive training and technical assistance network through EITA, which provides training at no cost to counties and providers.

The Department revised subsection (a) by striking reference to specific provider types and replacing it with the general term "early intervention personnel." The Department also made some technical changes to subsection (a) to correct improper word usage in the introductory paragraph and paragraph (6), to eliminate redundancy in paragraph (9) and to conform the subsection to other changes made in the final-form rulemaking. The Department added subsection (b) to clarify that all preservice training must be documented, not merely that required by paragraph (9), and to specify a record retention period. The Department deleted the parallel provision regarding documentation from paragraph (9).

Section 4226.37 (redesignated as § 4226.30). Annual training.

As with preservice training, many commentators supported an annual training requirement, although a few viewed annual training as an attempt to compensate for lack of education and experience. Several commentators nonetheless expressed reservations about the requirement, for varying reasons. Some commentators believed that 24 hours of training is excessive and that the requirement was generally vague. Other commentators expressed concern that the requirement will have a negative financial impact, questioning their ability to fund training and to recover income lost because staff are unavailable to deliver billable units.

Commentators also requested that the Department clarify whether the 24 required hours are clock hours, credit hours, continuing education credits or in-service hours; whether the training applies to child care providers; and whether the Department approves training pro-

viders or programs and, if so, recommended that the process for approval be included in the final-form rulemaking.

One commentator suggested that subsection (a) be revised to replace "the service coordinator, early interventionist and other early intervention personnel" with the broader "all personnel who work directly with the child." Two commentators recommended that the phrase "at least" be deleted from subsection (a) to avoid the potential for arbitrary variation. One commentator stated that the training topics are too limited and suggested adding the phrase "may include but are not limited to."

Commentators offered a number of other suggestions, including requiring therapists to receive training; allowing existing licenses and certifications to be credited as training; reducing the number of training hours; adjusting current rates to account for the cost of training; collecting data on actual costs; and allowing program funding for staff development activities. Some commentators recommended that fire safety, first aid and CPR should be included in annual training, but others objected to including training for the same reasons set forth in the response to comments to § 4226.36 (redesignated as § 4226.29) (relating to preservice training).

One commentator asked the Department to reconsider applying the requirement to part-time staff and independent contractors, claiming it could alter the status of the agency-contractor relationship. Another commentator observed that requiring 24 hours of training before working with families can cause services to be delayed. One commentator asked the Department to clarify the "annual certification" in subsection (b). Another commentator stated that the recertification is unnecessary because early intervention personnel are never alone with the child and therefore do not have responsibility for emergency situations.

One commentator recommended that the section should specify who pays for training. The same commentator suggested that this section should specify a timeline for maintaining training records.

Response

The Department finds that it is essential for all early intervention personnel, including therapists, part-time personnel and independent contractors, to be knowledgeable about best practices within the early intervention field. A variety of disciplines are involved in the early intervention program in which licensed or certified practitioners receive training in their area of expertise. Training does not displace the vital need for training specific to the early intervention field, community resources and services for children with disabilities. The required number of hours is 24 clock hours, which the Department believes reflects a reasonable and realistic expectation for personnel in the field.

The Department substituted "early intervention personnel" for reference to specific professionals in subsection (a). Because the meaning of the term "hours" as used in this section is consistent with the dictionary definition of the term, the Department did not revise this section to specify the type of hours required. The Department also did not revise this section to expand the list of training topics, which are the topics the Department believes are important for early intervention personnel. Conversely, it did not delete the phrase "at least" because personnel are not prohibited from receiving more training than the prescribed 24 hours.

Training in fire safety, first aid and CPR are included in "universal health procedures," which is one of the listed training topics. For the reasons stated in the response to comments to redesignated § 4226.29, the Department did not delete this training topic. The annual certification required by subsection (b) is issued for training in universal health procedures such as CPR. Because the Department retained this as a topic in subsection (a), the annual certification continues to be required.

Unlike preservice training, the 24 hours of annual training need not be completed before personnel begin to work with children and families. The Department amended subsection (a) to clarify that the 24 hours of annual training is in addition to the preservice training requirements in redesignated § 4226.29. The annual training requirement does not apply to child care providers, although they would not be prohibited from attending training related to early intervention services.

The Department does not approve training providers or programs and therefore did not include a process for approval in this section. The Department revised subsection (b) to specify a record retention period for annual training records, which parallels that in redesignated § 4229.29.

As noted in response to comments to redesignated § 4226.29, the Department has an extensive training and technical assistance network through EITA that provides trainings at no cost to counties and providers. Training is available throughout the year on a Statewide and regional basis and through teleconferencing. Also available are local trainings that can be designed to meet the needs of a particular county. As also previously explained, the county MH/MR programs receive a training allocation each year from the Department that they can utilize to meet the needs in their local area, in addition to being permitted to account for costs associated with training in the service rates they establish for providers.

The Department made technical changes in subsection (b) to make the wording more succinct.

Section 4226.38. Criminal history records check (redesignated as § 4226.31. Child Protective Services Law).

Some commentators pointed out that the requirement for a child abuse clearance was omitted from this section and recommended that the section be revised to require that all staff who have direct contact with children obtain the clearances. One commentator questioned why Commonwealth residents are not required to submit a Federal Bureau of Investigation (FBI) criminal history check. Another commentator asked if current personnel are grandfathered under the Child Protective Services Law (CPSL) (23 Pa.C.S. Chapter 63), as amended by Act 33 (23 Pa.C.S. § 6344) (Act 33). Two commentators complained that the reporting requirements of the Older Adult Protective Services Law (35 P.S. §§ 10225.101—10225.5102) (OAPSL) overlap with those of the CPSL, leading to confusion and delay. They suggested that the Department and the Department of Aging work together to eliminate overlapping rules and procedures.

Response

The requirement for a child abuse clearance was inadvertently omitted from the proposed rulemaking. Rather than restate the substance of Act 33 in this section, the Department revised this section to require that personnel comply with the CPSL and the Department's accompanying regulations in Chapter 3490 (relating to protective

services), which mandate both criminal history records checks and child abuse clearances.

Commonwealth residents are not required to obtain an FBI criminal history clearance under State law. The General Assembly created the difference in procedures for criminal history records checks between residents and nonresidents of this Commonwealth (23 Pa.C.S. § 6344(b)(1) and (3)). Because Act 33 has been in effect since 1986, the Department doubts that any current personnel have not obtained the mandated clearances. Act 33 has contained a grandfathering provision since enactment (23 Pa.C.S. § 6344(k)), whereby personnel employed on the effective date of the law were not required to obtain the mandated clearances. If those same personnel change jobs, however, both criminal history and child abuse clearances are necessary. Current personnel who have obtained the necessary clearances do not need to resubmit for the clearances when the final-form rulemaking becomes effective.

The comments addressed to the OAPSL are more appropriately addressed in a different forum. Act 33 unequivocally prescribes that early intervention services are child care services for which personnel must obtain the prescribed clearances. See 23 Pa.C.S. §§ 6303 and 6344(a). The Department of Aging addressed similar comments in the final-form rulemaking amending 6 Pa. Code Chapter 15 (relating to protective services for older adults) published at 32 Pa.B. 2412 (May 18, 2002). Neither Department has the authority to alter the mandates imposed by the General Assembly.

Section 4226.39. Penalties for noncompliance (deleted on final-form).

As explained in the response to comments to § 4226.4, the Department added the substance of this section to § 4226.4 so that all penalties for noncompliance are contained in one section. Accordingly, the Department deleted this section.

Section 4226.40. Reporting (redesignated as § 4226.32. Reporting and record retention).

One commentator objected to the phrase "information as the Department may require" in subsection (a) as vague and recommended that the information be specified. The same commentator observed that it is unclear how often or when the submissions are required and suggested that the time frames covered by the reports and the deadline for submission be identified. The commentator also asked whether the Department provides a form for the reports and suggested that the name of the form and how it may be obtained be included in the rulemaking. Finally, the commentator recommended specifying a time period for record retention in subsection (b).

Response

The Department made several revisions to this section in response to the recommendations. The Department clarified that reports are submitted on a monthly and annual, as well as periodic, basis and specified the subject matter of the reports. The Department did not specify the deadline for submission of the reports, since these vary by report. Instead, the Department added a new subsection (b), which provides that the Department will notify the county MH/MR programs in advance of the submission, both of the content of the report and of the deadline for submission.

This section codifies current practice, whereby the county MH/MR programs submit a number of reports to

the Department. For example, the counties submit monthly electronic reports on demographic information and service delivery. They also submit annual financial reports in hard copy. In addition, the Department occasionally requests ad hoc reports focusing on a particular aspect of the early intervention program. The Department has provided specific instructions to the counties in the *Early Intervention Reporting System Manual* and annual letters to the counties, which include the specific content of each type of report and the deadline for submission. The type of information to be included in a report, as well as the format of the reports, is likely to change over time as the needs of the program change or as technological advances enable the Department to permit additional reports to be submitted electronically.

For these reasons, the Department did not describe the specific content, format or deadline for submission of each type of report but focused on specifying the type of data that must be reported and the frequency of the reports. For the same reasons, the Department did not identify the specific forms to be used or where they can be obtained. This information is, however, included in the instructions to the counties.

The Department concurs with the recommendation that a retention period be specified in subsection (b) and added a time period. The Department made other minor technical corrections to this subsection by striking the word "part" and substituting the word "chapter" to correct an inadvertent error in the proposed rulemaking; and by striking "correctness and verification" and substituting "accuracy," replacing "and" with "or" and substituting "allocated" for "provided" to correct improper word usage.

Section 4226.41 (redesignated as § 4226.33). Traditionally underserved groups.

As noted in the response to comments to § 4226.5, two commentators suggested that the term "culturally competent" services in paragraph (2) be defined.

Response

As stated earlier, the Department concurs with the recommendation and added a definition of "culturally competent" in § 4226.5. The Department also made technical changes to paragraph (1) of this section to avoid repetitiveness and to conform the terminology in this section to that used throughout the final-form rulemaking.

Section 4226.43 (redesignated as § 4226.35). Confidentiality of information.

One commentator recommended that the specific citations to Federal and State law be included. The same commentator asked if "a" in the first line was a typographical error.

Response

The Department concurs with the recommendation and added the specific citations. The Department also corrected the typographical error by replacing "a" with "all."

The Department also revised this section by delineating into two subsections the separate responsibilities of maintaining the confidentiality of personally identifiable information and of informing parents of their rights to notice of and written consent to the exchange of the information. The Department made a corresponding technical change to redesignated subsection (b) by replacing "this" with "personally identifiable."

Section 4226.36. Child records.

One commentator requested the Department to provide guidance on the maintenance and retention of records in the final-form rulemaking.

Response

As requested, the Department added § 4226.36. The section specifies the children for whom a record must be maintained, the type of information that must be included in each record and the retention period.

Section 4226.51. Service coordination (deleted on final form).

After additional internal review, the Department deleted this section because it was repetitive of the definition of "service coordination" in § 4226.5.

Section 4226.52 (redesignated as § 4226.51). Provision of service coordination.

One commentator noted that the phrase "provide the services of a service coordinator" in subsection (a) was wordy and unclear and suggested revision to "assign a service coordinator." The same commentator questioned why this section does not specify a service coordinator-to-family ratio and requested that a maximum caseload ratio be specified or an explanation for why a ratio is unnecessary be given. Several additional commentators raised the caseload ratio issue in addressing § 4226.54 (redesignated as § 4226.53 (relating to service coordinator requirements and qualifications)).

Response

The Department rephrased the wording in subsection (a) as suggested. The Department also revised subsection (a) by substituting "as soon as possible" for "immediately," which mirrors 34 CFR 303.321(e)(1), to make the requirement in this section the same as in § 4226.24(f) (redesignated as § 4226.24(g)). As explained in the response to comments to redesignated § 4226.24(g), "as soon as possible" affords the counties appropriate flexibility to assign a service coordinator consistent with the needs of the referred child. In addition, on review, the Department determined that the standard of "immediately" is impracticable and virtually impossible to monitor for compliance.

The Department changed "referral . . . to early intervention" to "referral . . . to determine eligibility for early intervention services" to clarify the intent that a service coordinator be assigned before the eligibility determination. The Department also made technical changes to this subsection to correct improper word usage and to conform the subsection to other changes made in the final-form rulemaking.

The Department amended subsection (b) by deleting "coordinating all services across agency lines, and" and adding a cross reference to § 4226.52 (redesignated from § 4226.53 (relating to activities)). This amendment, in conjunction with the revision of deleting § 4226.54(b) (redesignated as § 4226.53(b)) avoids inadvertent multiple references in the proposed rulemaking to the responsibilities of a service coordinator in the three sections. The Department also made technical changes to this subsection to avoid inconsistency with other sections.

The rulemaking does not specify a service coordinator caseload ratio because a ratio is not a predictor of quality, effective service coordination and is, in fact, subject to being used as a substitute for quality assurance and monitoring. Conversely, compliance with a caseload ratio does not excuse inadequate service coordination. The Department monitors service coordination activities on an

ongoing basis. Based in part on that review, the Department finds that caseloads may appropriately vary among service coordinators based on the needs of the children and families to whom they are assigned. The Department instructs counties that their annual budget submissions may be based on funding for service coordination up to a 1:35 ratio. This approach, which allows counties to design their programs to reflect local needs, is preferable to establishing an arbitrary caseload ratio in regulation, which ignores the circumstances in individual counties. If a county experiences difficulties in providing appropriate service coordination because of caseload size or for any other reason, the Department addresses the issue with the county during compliance monitoring reviews.

Section 4226.53. Activities (redesignated as § 4226.52. Service coordination activities).

One commentator proposed that the difference in the roles of the service coordinator and the early interventionist should be clarified. Many other commentators presented the same concern in addressing § 4226.55 (redesignated as § 4226.54) and § 4226.56 (redesignated as § 4226.55).

With respect to paragraph (5) (redesignated as paragraph (8)), one commentator asked the Department to identify the recommended advocates. The same commentator requested clarification of the meaning of “coordinating medical services” in paragraph (6) (redesignated as paragraph (9)). Two commentators requested that this section clarify that service coordination activities include assisting families to understand and access systems of financing for early intervention and other health and social services and to facilitate family access to the multiple sources of funding.

Response

The Department acknowledges that the activities of the service coordinator in this section and the responsibilities of the early interventionist in § 4226.55 in the proposed rulemaking overlapped. The Department has revised redesignated § 4226.54 to clarify the distinction between these two professionals. Those revisions are explained in greater detail in the response to the comments to that section.

Although the Department does not “recommend” any particular advocates, “advocacy services” may be provided by professional advocates, other family members or anyone else the parent chooses. The role of the service coordinator is to inform the parent that advocacy services are available.

“Coordinating medical services” does not appear in this section. Rather, redesignated paragraph (9) requires the service coordinator to assist in arranging for the provision of medical and health services, which includes referring the family to appropriate health care professionals and assisting in scheduling appointments. “Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes)” means, for example, assisting the family in assuring that scheduled appointments do not conflict. The listing of services set forth in this section includes several activities (for example, in redesignated paragraphs (4) and (5)) that encompass informing parents about assisting them to access the various sources of funding. Therefore, the section was not revised to specify these functions.

The Department revised the heading of this section to enhance clarity. The Department also amended this section to delineate the specific activities more distinctly. For

example, the activities previously set forth in paragraph (1) were separated into paragraph (1) and new paragraphs (2) and (3). Similarly, the activities in paragraph (7) were previously included in paragraph (3) (redesignated as paragraph (5)). The remaining paragraphs have been renumbered to accommodate these changes. The Department also made technical changes to correct improper word usage and to enhance consistency within the section and to conform the section to other changes made in the final-form rulemaking.

Section 4226.54. Requirements and qualifications (redesignated as § 4226.53. Service coordinator requirements and qualifications).

One commentator recommended revising the section heading to “service coordinator requirements and qualifications.” Two commentators pointed out that “intervention service” in subsection (a) appeared to be a typographical error and should be deleted. As noted in the response to comments to redesignated § 4226.51 (relating to provision of service coordination), several commentators urged the Department to establish a maximum caseload for service coordinators.

Almost half of the commentators submitted extensive comments to the level of training and qualifications established for the service coordinator in subsection (c). The overwhelming majority of commentators objected to the qualifications as insufficient. Noting the importance of this position to the system, these commentators focused primary concern on not requiring a bachelor’s degree in a field at least somewhat related to early intervention; permitting less than a bachelor’s degree; and allowing work or volunteer experience—including counseling, management or supervision—unrelated to early intervention or child development. They offered varying recommendations, including requiring at least a bachelor’s degree in a field related to early intervention, experience working with young children, other than volunteer experience, training that is “competency based” and more years of experience.

One commentator recommended that the Department explain how the broad degree, course work and work qualifications will ensure consistent, quality service delivery. The same commentator requested that the Department clarify how part-time volunteer experience would be calculated to meet the minimum volunteer experience required.

Some commentators believed that the civil service certification permitted by subsection (c)(3) is inadequate, with one noting that civil service coordination presented an “inherent conflict of interest” and recommended that it be deleted. One commentator suggested that the title of the position be changed from “service coordinator” to “case manager” if the qualifications remained the same. A few commentators recommended specific training and experience for those service coordinators who work with “low incidence” infants and toddlers, such as those who are deaf or hard of hearing.

Some commentators believed that requiring a bachelor’s degree is excessive or that a minimum education requirement is not as important as demonstrated experience and expertise in the area. One commentator asked whether the county MH/MR programs had discretion to impose higher qualification requirements than specified in this section.

Response

The Department revised the heading and corrected the typographical error in subsection (a) as recommended. The Department made additional revisions to this subsection by converting it from passive to active voice to avoid ambiguity and by changing "subcontract" to "contract" to correct improper word usage. As noted previously, in the response to comments to redesignated § 4226.51, the Department deleted subsection (b) as redundant of redesignated § 4226.51(b). The Department addressed the maximum caseload ratio in response to comments to redesignated § 4226.51 and will not repeat that response here.

The Department spent a considerable amount of time researching and discussing this issue with advocacy organizations, parents, county MH/MR programs, other stakeholders and the Department's personnel office before issuing the proposed rulemaking, during the public comment period and after the formal public comment period closed. When developing the proposed rulemaking, the Department attempted to establish qualifications that would allow individuals with different degrees as well as varying work experiences, or whose qualifications are consistent with the Civil Service Commission (CSC) requirements, to be service coordinators. Because early intervention services have been provided in this Commonwealth since 1972, the Department believed that many individuals with a wealth of experience but without a particular college degree could be competent and effective service coordinators.

After issuing the proposed rulemaking, the Department had a variety of interactions with the opponents of the proposed rulemaking who strongly believed that individuals who have the first system contact with families should be required to have a bachelor's degree in a related area and work experience with children with disabilities. In their opinion, a person with lesser qualifications would not meet the needs of infants and toddlers and their families.

Discussions with county MH/MR programs revealed that counties have been experiencing difficulty in hiring individuals as service coordinators even with the qualifications outlined in the proposed rulemaking. County MH/MR programs reported that they were using the qualifications from the CSC when recruiting and hiring service coordinators. They emphasized that when hiring, they look for the person best suited for the job based on both education and work qualifications and experience. They expressed concern that if the qualifications were increased as requested, the task of recruiting personnel would become insurmountable.

In an attempt to develop qualifications that would balance these competing interests and needs, the Department discussed the possibility of establishing a separate classification for early intervention caseworkers under the CSC, which would not change degree requirements but would allow the Department to specify the type of degree. After further review, however, it became apparent that this option would not alleviate the problems that county MH/MR programs have had in recruiting personnel.

After careful consideration of the various objections and proposals from all stakeholders, the Department modified the qualifications in the proposed rulemaking in a way that it finds takes the needs of county MH/MR programs into account without compromising the quality and effectiveness of service delivery. The Department revised subsection (c)(1) to require minimum qualifications of a

bachelor's degree that includes 12 college credits in specified areas related to early intervention and 1 year of full-time or full-time equivalent experience in related fields. The Department deleted volunteer experience and work in management or supervision. In subsection (c)(2), the Department specified that an associate's degree or 60 credit hours without a degree must be in related areas and revised the work experience requirements as in subsection (c)(1). The Department also made a technical change in both paragraphs by replacing "people" with "individuals." The Department made an additional technical change in subsection(c)(3) by inserting "State" to avoid ambiguity.

In addition to modifying the qualifications, the Department added subsection (b) to this section, which requires that a service coordinator must demonstrate knowledge and understanding about specified subject areas before working with infants and toddlers and their families. The Department, through EITA, has also established a training curriculum for new service coordinators, which is available throughout the year to county MH/MR programs as the need arises. At the same time, the Department has reinstituted a series of service coordinator training sessions, which will be held at designated times throughout the year, to address specific topics and skills that service coordinators need to fulfill their responsibilities. The availability of these training opportunities, the preservice and annual training requirements outlined in redesignated §§ 4226.29 and 4226.30 and the requirement for demonstrated knowledge in subsection (b) of this section, all afford added weight to the revised education and work experience qualifications. These elements combine to ensure that service coordinators are fully equipped to do their jobs effectively.

Section 4226.55. Early interventionist (redesignated as § 4226.54. Early interventionist responsibilities).

Nearly half of the commentators objected to this section as confusing, in main part because the listed responsibilities seemed to duplicate functions of other early intervention personnel such as service coordinators and service providers. They requested the Department to clarify who the early interventionist is and what purpose the position is intended to serve. Several commentators noted, for example, that if the early interventionist is providing special instruction, as suggested in paragraph (3), then that person may not appropriately supervise other early intervention personnel, as specified in paragraph (2) (deleted on final-form), particularly because of the limited qualifications required for this position in § 4226.56 (redesignated as § 4226.55). These commentators uniformly requested that the Department clarify this section or delete it.

One commentator suggested that the term "developmental specialist" be used. Another commentator stated that the interventionist should be an advocate. A third commentator recommended that the "written communication reviews" in paragraph (4) (deleted on final-form) be described.

Response

Recognizing the confusion created by this section, the Department acknowledges duplication and inappropriateness of the activities ascribed to the early interventionist. The Department revised this section to clarify the activities of the early interventionist. As revised, the section specifies that the early interventionist is the person who provides several components of special instruction. The Department deleted proposed paragraphs (1), (2) and (4),

which included service coordination activities and thereby clarified the difference between those professionals. By deleting proposed paragraph (2), the Department also removed any connotation that the early interventionist supervises other service personnel.

The Department retained the term "early interventionist" because that is a term more widely recognized and used by the Federal government and, other states as well as, within this Commonwealth.

Section 4226.56(a). Requirements and qualifications (re-designated as § 4226.55(a). Early interventionist qualifications).

More than half of the comments the Department received addressed the level of training and qualifications for the early interventionist. Commentators criticized the qualifications as too broad, "woefully inadequate" and generally unacceptable. They offered a variety of suggestions: which included that an early interventionist should be a teacher and meet the standards established for special education teachers; an early interventionist should have a bachelor's degree in a related area and some experience working with young children; the scope of practice should be significantly limited if the qualifications remain as proposed; and volunteer experience should be disregarded. Some commentators expressed a different opinion, recommending a competency-based training system instead of formal education qualifications. A small number of commentators stated that a bachelor's degree and 1 year of experience is excessive.

One commentator requested an explanation of how the broad degree and course work requirements will ensure consistent, quality service throughout this Commonwealth. The same commentator requested that the Department clarify how part-time volunteer experience would be calculated to meet the minimum volunteer experience required.

A few commentators recommended that special qualifications for individuals working with children with low incidence disabilities should be included in the regulations. One commentator suggested revising the heading to "early interventionist requirements and qualifications."

Response

As it did with the qualifications of a service coordinator, the Department spent a considerable amount of time researching and discussing this issue with advocacy organizations, county MH/MR programs and other stakeholders. As discussed in the response to comments to § 4226.54 (redesignated as § 4226.53), when developing the proposed rulemaking, the Department attempted to establish qualifications that would allow individuals with varying degrees and experience who are well qualified, to perform the responsibilities of an early interventionist. Those responsibilities, as revised in redesignated § 4226.54, include: designing learning environments and activities that promote the child's acquisition of skills in a variety of different areas; providing families with information, skills and support related to enhancing the skill development of the child; and working with the child and family to enhance the child's development. Particular experience under consideration included early childhood, family studies and other nontraditional teaching degrees.

Stakeholder groups believed very strongly that a bachelor's degree with no instruction in a related field or an associate's degree was insufficient to prepare an individual to adequately provide the services of the early interventionist, regardless of the amount or nature of accompanying work experience. After careful consider-

ation of the objections and proposals from stakeholders, the Department revised the qualifications to strike a balance among competing interests. As revised, paragraph (1) requires at least a bachelor's degree in specified areas related to early intervention and 1 year of either full-time or full-time-equivalent work experience or a student practicum or teaching experience with preschool children with disabilities (infancy through 5 years of age) and their families. The Department deleted volunteer experience and experience with other persons with disabilities as well as counseling. In paragraph (2), the Department has permitted a bachelor's degree with 15 credits hours in areas related to early intervention, 1 year of experience working with preschoolers with disabilities and their families, with demonstrated knowledge, understanding and skills to perform the functions of an early interventionist. These alternative qualifications are directed toward maximizing the potential pool of candidates without compromising the quality of service delivery.

The Department agrees that personnel who work with infants and toddlers with low incidence disabilities should have experience dealing with those populations. As explained in the response to the comments to the definition of "special instruction" in § 4226.5, the Department expects that services to all infants and toddlers with disabilities, including those with low incidence disabilities, will be tailored to meet the individualized needs of the infant or toddler, as reflected on the IFSP in accordance with § 4226.74 (1), (3) and (4). The rulemaking also requires the county MH/MR programs to ensure that services are delivered in conformity with the IFSP. The Department is reluctant to highlight the need for specially trained providers for only certain disabilities because it expects all providers to have the training needed to meet the individualized needs of the infant or toddler. A regulation specifying specially qualified providers for only certain disabilities would dilute the strength of that expectation and message. Therefore, the Department did not include a regulation that emphasizes the need for special training only for certain disabilities.

The Department revised the heading as recommended, with one modification. Because the Department deleted subsection (b), as explained in the response to comments to subsection (b), this section no longer contains "requirements" in addition to "qualifications." Therefore, the section heading was revised to "early interventionist qualifications."

Section 4226.56(b). (redesignated as § 4226.55(b)).

A number of commentators questioned the requirement in this subsection for obtaining 6 credit hours annually. Commentators requested clarification on what is meant by "credit hours"; how this requirement relates to the 24 hours of annual training in redesignated § 4226.30; and whether it applies to all personnel, regardless of their degree, other qualifications or experience. Some commentators questioned whether the specified coursework was even available and who was responsible for the costs associated with obtaining the credits. Others complained that the requirement was excessive and unreasonable; would impose an undue financial burden on either providers or staff, or both; and would hinder ability to recruit staff. Some commentators objected that this requirement was redundant of the 24-hour annual training required by redesignated § 4226.30 and recommended that it be included in the annual training or deleted entirely. One commentator criticized the requirement as "another pointless, elitist credentialing exercise."

Response

In response to the objections and recommendations of the commentators, the Department deleted this subsection and reorganized the section accordingly. In light of the revised qualifications for early interventionists required by redesignated § 4226.55, the annual training requirements specified in redesignated § 4226.30 and taking into account concerns expressed by the commentators, the Department determined that an additional 6 credit hours of professional development is unnecessary to assure quality service delivery.

Section 4226.57 (redesignated as § 4226.56). Effective date of personnel qualifications.

Some commentators suggested that the proposed rulemaking wrongly grandfather personnel and recommended that the Department require all staff to meet applicable standards within a specified time period such as 4 years. Three commentators suggested the opposite, that all staff employed on the effective date of the final-form rulemaking be grandfathered. Three commentators proposed adding a provision similar to 34 CFR 303.361(g) (relating to personnel standards), which permits a state to adopt a policy that allows for the recruitment and hiring of appropriately and adequately trained personnel that do not meet established qualifications in geographical areas of the state where there is a shortage of personnel.

Response

The Department finds that it is appropriate to allow current employees to be grandfathered in when the final-form rulemaking becomes effective. The Department determined that it would be unrealistic and unfair to require personnel to, for example, obtain a college degree when they entered the early intervention system and have worked in the system for a number of years with no expectation of having to obtain a degree. The requirement is also unnecessary for existing personnel, since a primary purpose of qualifications is to predict and capture those attributes that are most likely to identify the candidates with little or no experience who are most likely to do the job competently and effectively. In the case of existing personnel, predictors are not needed because on-the-job performance provides actual rather than projected means to evaluate competence and effectiveness. The Department is also concerned that imposing the qualification requirements retroactively will have a dramatically adverse impact on the service delivery system, particularly in light of reports from county MH/MR programs of the difficulty they have historically had in recruiting staff, as noted in the response to comments to redesignated §§ 4226.53 and 4226.55.

The Department did not revise this section to include a provision comparable to 34 CFR 303.361(g). This is an option that the Federal regulation permits the Department to elect and is not appropriately delegated to the county MH/MR programs. If a county MH/MR program is unable to hire sufficient staff, either directly or through contract, who meet the qualifications established by the regulations, it may request a waiver from the qualifications through the procedure established in § 4226.6.

Personnel—Other comments.

Two commentators suggested that two new sections be added that specify the responsibilities and qualifications for therapists and supervisors.

Response

The Department did not make the recommended change. The Department finds that it is unnecessary and

misleading to specify this information for therapists and not for other qualified professionals as defined in § 4226.5. As explained in the response to comments to § 4226.5, the Department established the qualifications and responsibilities for a service coordinator and early interventionist because these professionals are not otherwise licensed or certified. For therapists, the Department of State has established both scope of practice and licensing requirements for each discipline. In addition, § 4226.5 contains definitions of the early intervention services, including therapies.

The Department finds that it is likewise unnecessary to prescribe supervisor qualifications or responsibilities. Redesignated § 4226.56 (relating to effective date of personnel qualifications) applies the personnel qualifications established by this chapter to individuals promoted as well as hired after the effective date. The Department is unwilling to interfere in county or provider operations by prescribing supervisory responsibilities in regulation.

Section 4226.61. Parental consent (deleted on final-form).

The Department deleted this section as duplicative of redesignated § 4226.92.

Section 4226.62(a) (redesignated as § 4226.61(a)). MDE.

Many commentators expressed opinions on the requirement in subsection (a)(2) that the initial multidisciplinary evaluation be conducted by personnel independent of the service provider, both supporting and opposing the requirement. Commentators expressed concern that it is less family-friendly and deprives parents of a choice of providers, observed that it complicates the system and is not cost effective. Two commentators recommended that the requirement not be applied to low incidence disabilities. A few commentators noted that the requirement could impose a burden on counties where there are not enough personnel to provide service and conduct evaluations, with some recommending that counties therefore be given the option to implement. Several commentators recommended that the Department consider waiving this requirement when there are no or insufficient providers to conduct evaluations, when the family chooses the same provider for the evaluation and to deliver services, when an evaluator with particular expertise is needed but no independent evaluator is available; and in other similar situations. Some commentators stated that the language is too ambiguous and does not provide clear guidance.

Regarding other general requirements, some commentators requested that the Department require that a written MDE report be provided to the family before the IFSP is developed. One commentator proposed that the MDE report be provided to the family within 60 days, and if a parent disagrees with the report, that a joint meeting with the MDE and IFSP team be convened within 10 days. Two commentators recommended that the final-form rulemaking include a requirement to provide an independent evaluation at no cost to families who have requested a hearing, while other commentators suggested that families be allowed one independent evaluation per year at the county's expense.

Response

The purpose of the requirement that an evaluation be conducted by someone independent of the service provider is to produce an assessment of the child's and family's needs that is not unduly influenced by consideration of services that are available from a particular provider. The Department remains convinced that independent evaluations are the first means of assuring that the needs of at-risk children and infants and toddlers with disabilities

and their families are met. Nonetheless, acknowledging that many of the commentators raised legitimate concerns, particularly concerning availability of evaluators in some counties and family choice, the Department recognizes that flexibility is the key to the success of this initiative. Therefore, as explained in the response to comments to § 4226.6, the Department added a new provision to the final-form rulemaking whereby county MH/MR programs may request a waiver of any regulatory requirement, including this one. After careful consideration of the comments recommending less ambiguous language, the Department determined that the same need for flexibility supports retaining the language as proposed. The very considerations that the commentators emphasized have persuaded the Department that language that is too prescriptive would be counterproductive. The current language allows counties to implement this requirement in a number of different ways, leaving it to the counties in the first instance to tailor the requirement to local needs. Therefore, the Department did not revise this paragraph as recommended.

The Department did revise subsection (a) in other respects. It revised the introductory clause by deleting "the following conditions are met" as unnecessary. It also amended paragraph (1) by simplifying the wording to avoid ambiguity and inconsistency within this section and with other sections of the rulemaking and including reference to the family-directed assessment. The Department deleted paragraph (3) because the county MH/MR programs are generally responsible for assuring that their contracting service providers and agencies comply with those sections of the rulemaking that do not explicitly apply only to county MH/MR programs. This paragraph was therefore redundant.

The Department added paragraph (3), which provides that an MDE be conducted annually. Neither Federal nor State law requires that the family receive a written MDE report before the IFSP is developed, and it would be impracticable to impose this requirement, since the IFSP must be completed within 45 days of referral. However, best practice encourages evaluators to involve parents in the evaluation process and discuss the findings with the family while conducting the evaluation. It is through this means that families are aware of the evaluation findings prior to the IFSP. The Department did add paragraph (4), requiring that a written report be forwarded to the parent within 30 days of the MDE. Finally, the Department accepted the recommendation that an independent evaluation be provided at no cost to a parent who requests a due process hearing and added this requirement as redesignated § 4226.100(b)(1) (relating to parental rights in due process hearings). The Department did not adopt the recommendation to require a joint meeting to be convened if the parent disagrees with the MDE. If the family disagrees with an MDE, the appropriate course is to pursue the available procedural safeguards.

Section 4226.62(b) (redesignated as § 4226.61(b)).

A few commentators suggested the word "qualified" be added to subsection (b)(1)(i) to be consistent with 34 CFR 303.322(c)(1). Several commentators suggested that subsection (b)(2) should be revised to require "at least two" professionals in the MDE. One commentator stated that subsection (b)(2) would be clearer if revised to "MDE team." Two commentators recommended that the Department require that parents be given advance written notice that they may invite anyone they would like to participate in the MDE or the IFSP meeting. A few commentators objected that subsection (b)(1)(iii)(C), which

requires an assessment of the needs of the child and identification of services to meet the needs, contradicts the IFSP team process. They suggested providers be directly involved in the planning stages for the IFSP and that providers and therapists should be allowed to inform families of the repercussions of not choosing a particular service as a priority.

Response

The word "qualified" does not appear in 34 CFR 303.322(c)(1) and the Department therefore did not revise subsection (b)(1)(i). The Department revised subsection (b)(2) to clarify that it identifies the participants in the MDE. As explained in the response to comments to the definition of "multidisciplinary" in § 4226.5, a service coordinator is appropriately considered one of the "professionals" that is contemplated in the definition. Therefore, the Department did not revise subsection (b)(2). Although the Department agrees that parents must be notified that they may invite other MDE participants, in the absence of a Federal requirement for written notice, there are likely to be circumstances that make written notice impracticable.

Subsection (b)(1)(iii)(C) is identical to 34 CFR 303.322(c)(3)(iii). Neither Federal nor State law requires providers to be involved in the initial IFSP planning stages; therefore the Department did not impose this requirement in the final-form rulemaking. Although the final-form rulemaking does not prohibit providers and therapists from discussing the importance of various services with the family, it remains the family's decision to establish the priorities for their child and family.

After additional review, the Department added subsection (b)(3). This paragraph is intended to clarify that if existing documentation of medical history is sufficient to render the determinations required in subsection (b), the child need not be subjected to another evaluation to comply with this section. The determination of whether an additional evaluation is needed is left to the judgment of the qualified professionals who are familiar with the child, subject to parental agreement.

The Department made several technical changes to this subsection. In subsection (b)(1), it added the term "referred" to improve clarity in light of the revision to the definition of "child" in § 4226.5. Paragraph (1)(iii)(B) was reformatted to eliminate the enumerations to enhance consistency with similar sections in the final-form rulemaking. In clause (C), the cross reference to "subparagraph (ii)" was corrected to "clause (B)," which relates to the child's developmental areas. In subsection (b)(2), the Department inserted the defined term "qualified" and struck the clause "who meets State approved or recognized certification, licensing or other comparable requirements, if applicable, in which the person is providing services."

Section 4226.62(c) (redesignated as § 4226.61(c)).

One commentator asked whether the family-directed assessment is a formal assessment and who is expected to conduct the assessment.

Response

The service coordinator or MDE team, or both, obtain the information for a family-directed assessment, with agreement by the family, through ongoing discussion to identify resources, concerns and priorities of the family. This is not required to be a formalized assessment.

The Department made some technical changes to subsection (c) to correct improper word choice, avoid redundancy and enhance consistency within the subsection.

Section 4226.62(d) (redesignated as § 4226.61(d)).

Some commentators stated that the timeline established in subsection (d)(1) is inconsistent with the 45-day timeline in 34 CFR 303.321(e)(2) and suggested that this paragraph be revised to clarify that the IFSP must be held within 45 days. Several other commentators raised the same issue in addressing § 4226.24(f) (redesignated as § 4226.24(g)). Commentators questioned how an interim IFSP can be developed if eligibility has not been determined. Other commentators raised this issue in addressing § 4226.75 (redesignated as § 4226.76 (relating to provision of services before MDE is completed)). One commentator asked if the Department intends to issue a form for an interim IFSP and if there will be a way to enter information into the Early Intervention Reporting System. A few commentators expressed concern that changing the reevaluation period from every year to every 2 years is not appropriate.

Response

As already noted, the Department revised § 4226.24(g) to clarify that the IFSP meeting must be conducted within 45 days of referral. Consistent with that revision, the Department revised subsection (d)(1) to clarify that the time frame within which the evaluation must be completed is measured by reference to the IFSP. The evaluation must be completed within the time as needed for the IFSP meeting to be conducted within the 45-day time frame. The Department expects that the timing of the evaluation is likely to vary with the circumstances of each child and family. Subsection (d)(2) was revised accordingly.

An interim IFSP is established in 34 CFR 303.322(e)(2). The purpose of this provision is to prevent delay in service delivery in the exceptional situation where, despite best efforts to do so, the MDE and IFSP cannot be developed within 45 days. The Department does not anticipate creating a separate form for an interim IFSP; the current IFSP form may be utilized for interim IFSPs. The information currently can be input into the Early Intervention Reporting System.

The Department did not propose to change the evaluation period. As clarified in new subsection (a)(4), evaluations must be completed annually.

The Department made some additional revisions to subsection (d). It replaced "evaluation and initial assessment" with "initial MDE, including the family assessment" to avoid inconsistency with other subsections. It also revised paragraph (2)(ii) to clarify that the circumstances are to be documented in the child's record.

Section 4226.63 (redesignated as § 4226.62). Nondiscriminatory procedures.

One commentator recommended that this section provide examples of situations in which communication with parents in their native language, as required by paragraph (1), would be considered "clearly not feasible," to improve clarity. Two commentators suggested that this section clarify that a child should be tested and evaluated in the child's native language or mode of communication, to account for families in which a deaf child is born to hearing parents.

Response

The language in this section mirrors 34 CFR 303.323 (relating to nondiscriminatory procedures). Therefore, the Department did not revise the section to add "child's native language or mode of communication." As explained in the response to comments to the definition of "native

language" in § 4226.5, this section is directed toward communication with the parent, which is a critical component of the evaluation, as reflected in redesignated § 4226.61. Nonetheless, to the extent that the child is of an age to communicate and determination of the developmental areas requires communication, the Department expects that communication with the child will be in the child's native language, including sign language. The Department has highlighted this point as a training issue.

The Department likewise expects that there would be few situations in which it is "clearly not feasible" to communicate with a parent in the parent's native language. One example of a situation might be when a family speaks a language that is uncommon, the county MH/MR program has been unable to find an interpreter despite good faith efforts to do so and no family member or friend is available to translate even informally.

After careful consideration of the recommendation to include examples in the final-form rulemaking, the Department determined that it would be unwise and perhaps even misleading to do so. Although, as noted, few situations would present infeasibility, the Department cannot anticipate every scenario that would be justified. More important, whether communication is clearly infeasible will necessarily vary according to the circumstances of each case. For these reasons, the Department did not cite examples as recommended.

The Department made technical changes to this section to eliminate unnecessary wording and redundancy.

Section 4226.71. IFSP—General.

Two commentators noted that since services are by Federal law permitted to be provided in a location other than a natural environment, the final-form rulemaking should specify that the county MH/MR program will honor the placement decisions made by the IFSP team based on the child's needs and the family's preference and not veto locales that reflect the consensus of the IFSP team.

Response

Although these commentators raised the issue of natural environments in comments to this section, several other commentators addressed the same issue in commenting on § 4226.74. Therefore, the Department responded to these comments in the response to § 4226.74.

The Department made a technical correction to this section by deleting the first sentence from subsection (b), since this is the definition of IFSP in § 4226.5. In paragraph (4), the Department struck "option" and inserted "source" to avoid inconsistency with other sections.

Section 4226.72(a). Procedures for IFSP development, review and evaluation.

As did several other commentators in addressing other sections of the rulemaking, three commentators requested clarification on the 45-day timeline for developing the IFSP.

Response

The Department revised § 4226.24(f) (redesignated as § 4226.24(g)) to clarify that the evaluation and IFSP must be completed within 45 days.

Section 4226.72(b).

Some commentators stated that the language "or more often" in subsection (b) was too vague and recommended adding language that makes clear that the review must

be conducted sooner than every 6 months if the family requests such an earlier review. One commentator requested examples of "other means" by which parents and other participants can choose to participate. One commentator observed that problems will occur if the IFSP is not reviewed for 2 years. Other commentators suggested that providers be allowed to use their clinical or professional opinion when providing services to families.

Response

The Department concurs with the first recommendation and revised the introductory paragraph of subsection (b) to mirror 34 CFR 303.342(b)(1) (relating to procedures for IFSP development, review and evaluation). The Department also added conference calls and written reports as examples of the other means that parents and participants can choose. The Department did not include an exhaustive list of "other means" in this subsection because such means are likely to change over time, given technological and other advances and the preferences of team participants.

IFSPs are required to be evaluated once every year, and a review of the plan should take place every 6 months or more frequently if the family requests it, not every 2 years. No provision in the rulemaking prohibits providers from using their clinical or professional opinion when providing services to families.

Section 4226.72(c).

One commentator suggested the evaluation be conducted as part of the 6 month review.

Response

The IFSP and the progress the infant or toddler with a disability is making is reviewed every 6 months so the Department does not believe a formal evaluation of the child is necessary.

Section 4226.72(d).

One commentator suggested that subsection (d)(1) be revised to state "at reasonable times that are convenient to the families and agreed upon by teams members." Another commentator recommended that a minimum amount of time be specified for "early enough" in subsection (d)(3) (redesignated as subsection (e)).

Response

The Department recognizes that all members of the IFSP are important to the process and expects that all participants will be given an opportunity to participate in the development of the IFSP. Primary consideration must, however, be given to the ability of the family to participate in the meeting and the meeting must therefore be scheduled at the family's convenience, within reason. The rulemaking permits other team members to participate by other means if the time established by the family is not convenient for all team members. Therefore, the Department did not make the recommended change.

The Department was reluctant to establish a minimum time frame, because the Department believes that it may be appropriate for the time frame to vary based on the individual circumstances of the child, family and team participants. Because families and early intervention personnel are working within a 45-day timeline to develop an IFSP, families, service coordinators and other team members are in full communication with each other to establish the most convenient times available whenever possible. Notwithstanding these reservations, the Department acknowledges that there is little point to a requirement for written notice if the notice does not

arrive on time. Therefore, the Department revised subsection (e) to require that the notice be provided no later than 5 days before the scheduled meeting date.

As noted in the response to comments to the definition of "early intervention services" in § 4226.5, the Department added subsection (d)(3), which requires that the IFSP meeting be conducted in a manner that ensures that services are selected in collaboration with the family. The Department struck "family or other mode of communication used by the family" from subsection (d)(2) because this is part of the definition of "native language" in § 4226.5, and made a technical change by replacing "family" with "parent" to avoid internal inconsistency. The Department redesignated proposed subsection (d)(3) as subsection (e) to correct an organizational error. Finally, the Department deleted proposed subsection (e) from this section and inserted a substantially identical provision as redesignated § 4226.92(c).

Section 4226.73. Participants in IFSP meetings and periodic reviews.

Several commentators expressed various concerns about the participants in the IFSP meeting identified in subsection (a), including that there is a lack of clarity about who is required to participate on the IFSP team and that the final-form rulemaking should state that the IFSP team is to be multidisciplinary and should include two or more disciplines or professions as well as parents; that persons providing services to the child should participate and the words "as appropriate" in subsection (a)(6) be removed or language be added that indicates that families can make a determination on whether the providers should or should not attend and families should be informed of the choice in writing; that parents should be informed in writing that an advocate or person outside the family can participate in the IFSP; and that parents should be informed of those persons who will be attending the meeting prior to the meeting. One commentator asked how child care providers recover costs that will be incurred for attendance at IFSP meetings.

A number of commentators emphasized that the IFSP team, not the county MH/MR program, is responsible for making decisions about the child and suggested that service decisions are not being made at the IFSP meeting. They urged that the service coordinator must have the authority to commit resources or that someone with authority should attend the IFSP meetings. One commentator asked whether a county MH/MR program can deny services agreed upon as part of an IFSP and, if so, what happens regarding the recommendations.

Response

The participants at an IFSP meeting are outlined in this section. As explained earlier, neither Federal nor State law requires that two professionals in addition to the service coordinator participate in the MDE or the IFSP. Nor does it prohibit two or more disciplines from participating in the IFSP meeting. It is the responsibility of the service coordinators to inform the families that advocates and persons outside the family can participate in developing the IFSP. The language "as appropriate" is consistent with federal regulations and therefore was not deleted.

The Department agrees that it is the IFSP team, which includes the family, that has the responsibility to develop a plan of service delivery for the child. As outlined in redesignated § 226.52(3), the service coordinator is responsible for "facilitating and participating in the devel-

opment, implementation, review and evaluation" of the IFSP. The service coordinator is an equal member of the team. The service coordinator or other team members may disagree with the decision being discussed at the IFSP meeting. If consensus cannot be reached on the appropriate services for the child, the parent may pursue any of the procedural safeguards available to challenge the outcome. If the team does reach consensus, then the county MH/MR program must abide by that decision. If it does not, then the parent again should pursue the procedural safeguards available to challenge the county decision.

No mechanism exists for child care providers to receive payment for their attendance at IFSP meetings. If a child is in a child care setting, the child care provider may be an integral member of the team. As do other team members, it has the ability to participate in development of the IFSP through written communications, discussions with the family or conference calls.

The Department made technical changes to subsection (c) to correct improper word usage and typographical errors.

Section 4226.74(1). Content of the IFSP.

Two commentators noted that paragraph (1)(i) was inconsistent with 34 CFR 303.344(a)(1) (relating to content of an IFSP) and recommended that the phrase "based on objective criteria" be deleted.

Response

The Department concurs and made the change as recommended.

Section 4226.74(2).

Two commentators noted that the provision identified in paragraph (2) was inconsistent with 34 CFR 303.344(b) because it did not have the introductory phrase "with the concurrence of the family" and suggested that the paragraph be revised.

Response

The Department concurs and made the change as suggested.

Section 4226.74(4).

A few commentators submitted comments on the listing of qualified personnel in proposed paragraph (4)(ii) that addressed the process for credentialing, the addition of sign language instructors, the addition of language signaling that special educators need to be knowledgeable about the communication needs of the child, and not limiting personnel to those listed in this subparagraph.

One commentator pointed out that location is "defined" in subparagraph (iv) but the section does not require that the location must be listed on the plan. One commentator stated that the terms "frequency" and "intensity" in subparagraph (ii) are defined too restrictively and suggested adding a statement that the maximum number of times per month may not be delivered every month. Another commentator sought direction on how to document "frequency and intensity."

Response

The Department deleted proposed subparagraph (ii) from this section as duplicative of the listing of qualified personnel in the definition of "early intervention services" in § 4226.5. The issues presented by the commentators to this section have been addressed in the response to comments to the definition of "early intervention services" in § 4226.5.

The Department made several revisions to this paragraph. It revised subparagraph (i) to conform to 34 CFR § 303.344(d)(1). It added clause (B) regarding natural environments, requiring that the IFSP include a justification if services are not provided in natural environments. A similar requirement was set forth in proposed paragraph (5) of this section and the many comments received on the issue of natural environments are addressed in the next section. The Department also added clauses (C) and (D), requiring that the IFSP list the payment arrangements and unit costs. It deleted the definition of "method" and "location" since these terms are defined in § 4226.5.

The completion of the IFSP form, including frequency and intensity of service, is an issue to be addressed at training.

Section 4226.74(5).

The Department received a number of comments on the provision related to natural environments. Commentators suggested clarifying that parents have choices and options and that their preferences should be documented and considered; that a school or program for a child that is deaf may be a natural environment; and that the IFSP team must make the decision on the appropriate environment and appropriate justification.

Response

Because the delivery of services in natural environments is integral to the provision of early intervention services, the Department added § 4226.75(a), which requires that to the maximum extent appropriate to meet the needs of the infant or toddler with a disability, as determined by the IFSP team, services are to be provided in natural environments. The basic premise to the provision for natural environments is that services should be provided in communities or locations where the child lives, learns and plays in order to enhance the child's participation in family routines and the activities and routines that occur in a variety of community settings where children and families spend time. Home and community settings provide children the opportunity to learn and practice new skills within a context that provides educational and developmental interventions. The natural environment in which supports and services will be provided should be based on information garnered from the evaluation and assessment as well as the child's present status, family information and desired outcomes, which relate to the outcomes on the IFSP.

It is the responsibility of the IFSP team to determine how early intervention services can be achieved in a natural environment. The parents are clearly an integral part of the team process, but parental preference divorced from the needs of the infant or toddler cannot be used as a justification for providing services in a setting other than a natural environment. The determination for where a service is provided should, again, be based on information from the evaluation and assessment as well as the child's present status, family information and desired outcomes.

It is the responsibility of the IFSP team to make decisions separately for each service. If the team determines that a particular service for the child must be provided in a setting other than a natural environment, the team must include a justification as outlined in § 4226.74(4)(i)(B). It is expected that when developing an IFSP for the child and family, the IFSP team will first determine which services are needed for the child and how they can be delivered in the child's natural environ-

ment. Only if a particular need of the child cannot be met in the natural environment should other settings be considered.

A child who is deaf or hard of hearing may receive services in a setting other than a natural environment based on their individual needs. The Department addressed this same issue in the response to comments to the definition of "natural environments" in § 4226.5 and will not repeat that response here.

Section 4226.74(6) (redesignated as § 4226.74(5)).

One commentator asked if unit costs were no longer required on the IFSP.

Response

The Department added clause (D) to paragraph (4)(i), requiring that unit costs be included on the IFSP.

Section 4226.74(7) (redesignated as § 4226.74(6)).

Almost half of the comments the Department received urged the Department to specify a time period for when services should start after the IFSP is completed. Many commentators suggested that services should start within 14 days. One commentator argued against establishing an arbitrary timeline.

Response

In developing the proposed rulemaking, the Department was hesitant to include a time-line for implementation of the IFSP for a variety of reasons. The Department was concerned that specifying a particular time frame, such as 14 days, could delay the start of service if programs had a "window" of 14 days to comply. It is also possible that there could be an appropriate delay in service based on a team decision or parental request.

After careful consideration, the Department has adopted a requirement that services are to begin within 14 days after the IFSP is completed, subject to exception if the family requests or the needs of the infant or toddler warrant an extension. This requirement is in new § 4226.75(b). The requirement to document the service start date on the IFSP has been modified accordingly in paragraph (7) (redesignated as paragraph (6)).

Section 4226.74(8) (redesignated as § 4226.74(7)).

Two commentators suggested that this paragraph be deleted because the rate structure does not allow for the best team member to coordinate services for the child and family. Two commentators believed that this paragraph contradicts the service coordination model implemented in this Commonwealth.

Response

The Department revised this paragraph by deleting the requirement that the service coordinators be from the profession most immediately relevant to the infant or toddler's needs, since this does not reflect the service coordination system in this Commonwealth. Since the current system is permitted under Federal law, the Department revised this paragraph accordingly.

Section 4226.74(9) (redesignated as § 4226.74(8)).

Many commentators requested that the final-form rulemaking provide guidance to the field on the transition process. Commentators recommended using language that is consistent with Federal regulations; questioning the county's ability to influence the timelines of transition meetings; including specific language to allow more options and defining the ability of the team to authorize or refer a child to services in a center-based program during

the transition year, prior to the third birthday; including language on pendency to ensure that services continue when a child turns 3 years of age if a dispute occurs; and the need for more flexibility so that a separate IFSP and IEP are not developed in a short period of time. One commentator believed the local educational entity, not the county, is responsible for coordinating meetings and that a formal conference is not necessary for children not eligible for preschool programs.

Response

After additional internal review, the Department deleted this entire paragraph from this section and restated the substance of the paragraph in new § 4226.77 (relating to transition from early intervention services). Partially in response to the comments received, the Department determined that the provisions of this paragraph impose substantive requirements that are not appropriately set forth in a section that pertains to documentation requirements. The provisions of § 4226.77 are in substance virtually identical to those in paragraph (9) of the proposed rulemaking, with the exception of some technical changes made to improve clarity and reduce unnecessary wordiness. The new section also differs from proposed paragraph (9) in that it includes the specific steps, from 34 CFR § 303.344(h)(2), that the commentators proposed to include. Paragraph (9) of this section (redesignated as paragraph (8)) has been modified accordingly to prescribe what needs to be included on the IFSP.

Turning to the comments, in reference to center-based programming in the transition year, the Department did not offer further clarification because the Department believes there is nothing in the final-form rulemaking to prohibit such programming, but neither is it encouraged for all children. The decision on the location of service, as well as the justification for where the service is provided, is the responsibility of the IFSP team. A team decision that the child needs a particular service in a particular location should be based on evaluation and assessment information. An appropriate justification for providing services in a location other than natural environment is not that the child is turning three.

The Department did not add language regarding pendency to ensure that services continue when a child turns three if there is a dispute. Once the child turns 3 years of age, programmatic and fiscal responsibility transfers to the Department of Education. The Department has no authority to establish regulations that would govern operation of the Department of Education's early intervention program.

It is the responsibility of the county MH/MR program to convene a conference with the local education entity and the family for children who are eligible for Part B services as well as for families of children who are not eligible but may be transitioning to other appropriate services.

Section 4226.75. Provision of services before evaluation and assessment are completed (redesignated as § 4226.76. Provision of services before MDE is completed).

One commentator suggested that this section should identify under what circumstances it would be appropriate for services to begin before an evaluation is completed. Four commentators stated that it is not clear how a child can be determined eligible for services, or what services are needed, in the absence of an evaluation and recommended that the section be deleted.

Response

Unlike § 4226.61(d)(2), which is directed to those situations in which the MDE could not be completed within prescribed timeline despite best efforts to do so, the purpose of this section is to facilitate services if a child has an immediate or apparent need. One example of a child for whom an interim IFSP would be appropriate under this section is a child born with spina bifida whose need for physical therapy is apparent without a full MDE and IFSP. The determination of a need would be based on the very individualized circumstances of the child. It is therefore virtually impossible to attempt to describe even broad categories of examples that would provide meaningful direction. The Department finds it is inappropriate to list any examples in the final-form rulemaking. Outlining specific circumstances might result in service delay for a child with an immediate need because the specific circumstance was not included in the examples.

The Department revised paragraph (3) by adding a cause that clarifies that if an interim IFSP is developed because exceptional circumstances preclude the MDE and IFSP from being developed within 45 days, then the MDE need not be completed within that specified time frame, as this paragraph otherwise requires.

Procedural Safeguards

The sections dealing with procedural safeguards were reorganized to reflect a more cohesive progression from general provisions that apply in any forum to the specific provisions related to each mechanism for resolving a dispute.

Section 4226.91. General responsibility of legal entity for procedural safeguards (redesignated as "General responsibility for procedural safeguards").

Several commentators expressed concern that the rulemaking does not address the complaint management system set forth in 34 CFR 303.510—305.512 (relating to lead agency procedures for resolving complaints), including the requirement that parents receive written notice of procedures to follow to file a complaint. They suggested it be included. One commentator noted that parents do not know how to file a complaint.

Response

The Department revised and redesignated § 4226.97 (redesignated as § 4226.95). As revised, redesignated § 4226.95(b)(3) and (4) requires that the notice issued to parents inform them of their right to conflict resolution, mediation and a due process hearing as well as the right to file a complaint with the Department and the procedures for filing a complaint. The Department did not include the complaint management system in the rulemaking because the Federal regulations impose that requirement on the Department, not the county MH/MR programs. Since the final-form rulemaking applies to county MH/MR programs and service providers and agencies, the complaint management system is appropriately omitted.

The Department made several revisions to this section. It deleted subsection (b) because the county MH/MR programs are generally responsible for assuring that their contracting service providers and agencies comply with those sections of the final-form rulemaking that do not explicitly apply only to the county MH/MR programs. Subsection (b) was therefore redundant.

The Department also amended proposed subsection (a) by inserting "meet the requirements of this chapter, except §§ 4226.101 and 4226.102 (relating to impartial

hearing officer; convenience of proceedings, timelines)" in place of "shall include, at a minimum, conflict resolution, mediation and administrative hearing as set forth in." The Department made this change to avoid ambiguity and confusion regarding the responsibilities of the county MH/MR programs under this section. As revised, the section clarifies that the county MH/MR programs must adopt procedural safeguards that comply with all but the two specified sections. Redesignated §§ 4226.101 and 4226.102 address procedures for due process hearings, for which counties have no responsibility. Instead, due process hearings are conducted by a contractor of the Department. For that reason, these sections were excerpted from the operation of this section. The Department also reorganized the section to accommodate the deletion of proposed subsection (b).

Section 4226.92. Notice of rights (deleted on final-form).

The Department deleted this section as redundant of redesignated § 4226.75(b).

Section 4226.93 (redesignated as § 4226.97). Conflict resolution.

Some commentators expressed concern that this section, § 4226.94 (redesignated as § 4226.98) (relating to mediation) and § 4226.100 (redesignated as § 4226.99) (relating to due process procedures) were all very confusing. These commentators noted that the sections did not make clear the difference between county level resolution and mediation; suggested that due process rights are available only after parents use conflict resolution; and lacked clarity on what happens if conflict resolution does not resolve the dispute. One commentator objected that this section did not provide direction to families on how to file a complaint. Another commentator suggested that all of the procedural safeguards sections be combined into one section with the heading "conflict resolution."

Response

The Department made several revisions to this and the other procedural safeguards sections in an attempt to clarify the numerous protections available to families under the final-form rulemaking. The Department revised this section (redesignated as § 4226.97) to clarify the distinction between conflict resolution, which is a meeting with local county staff to resolve an issue, and mediation, which is a meeting conducted by an independent mediator not associated with the county MH/MR program. The Department amended subsection (a) to describe more clearly what conflict resolution is. Subsection (b) was revised by adding paragraph (2) to emphasize that conflict resolution is available independent of a request for mediation or a due process hearing; by amending paragraph (2) (redesignated as paragraph (3)) to clarify that the county MH/MR program must make an offer for conflict resolution when a request for mediation or a due process hearing is filed but that the parent can refuse the offer; by changing the wording in paragraph (3) (redesignated as paragraph (4)) from "if conflict resolution is unsuccessful" to "if no resolution or agreement is reached at the meeting"; and by adding a new paragraph (7) to emphasize that parental participation is voluntary, and that parents do not have to participate in order to exercise other procedural safeguards. The Department also revised § 4226.97 (redesignated as § 4226.95) to specify in redesignated § 4226.95(b)(3) that the notice must include a description of the available procedural safeguards. As noted in the response to comments to § 4226.91 (relating to general responsibility for proce-

dural safeguards), new redesignated § 4226.95(b)(4) requires that the notice also advise of the right to file a complaint with the Department. The comment regarding the complaint management system was otherwise addressed in the response to comments to § 4226.91, and that response will not be repeated here.

The Department acknowledges that an alternative organizational scheme could be to entitle a subchapter or section "conflict resolution" and encompass all remaining sections, but the Department did not choose that scheme. Instead, it clarified the intent of these sections by amending the sections and reorganizing them. Although this commentator offered the proposed reorganization in commenting on every remaining section except § 4226.105, the Department will not repeat this response.

Section 4226.94 (redesignated as § 4226.98). Mediation.

As with the section on conflict resolution, some commentators expressed concern that this section was confusing and requested that it be clarified. One commentator observed that this section implied that mediation is available only if a parent requests a due process hearing and suggested that it be available whenever there is a dispute. Two commentators recommended that this section specify a time frame for conducting the mediation session in subsection (d) rather than retain the phrase "in a timely manner."

Response

The Department revised and redesignated the substance of this section as § 4226.98. The Department revised this section in several respects to dispel confusion and to address other comments submitted. Subsection (a) was revised to delete the clause that began "which, at a minimum" and concluded with "impartial decisionmaker" in the proposed rulemaking. The reason for this revision is to remove any ambiguity about when mediation must be made available and clarify that a parent does not have to ask for a due process hearing for mediation to be available. Subsection (b) was revised by adding paragraph (2) to clarify that the county MH/MR program must offer mediation to a parent who requests a due process hearing. Subsection (c) in the proposed rulemaking was redesignated as subsection (f) and amended to correct an inadvertent error in the proposed rulemaking by adding the phrase "to encourage the use and explain the benefits of the mediation process" to the introductory paragraph and deleting a similar clause from paragraph (2).

Subsection (d) in the proposed rulemaking was redesignated as subsection (c) and revised to specify that a mediation session must be scheduled within 10 days of a request for either mediation or a due process hearing, rather than "in a timely manner." Subsections (e) and (f) in the proposed rulemaking were redesignated as subsections (d) and (e), respectively, but were otherwise not changed.

The Department has contracted to provide mediation services through the Office of Dispute Resolution (ODR), the same entity that conducts due process hearings. ODR has a staff of trained mediators. A mediator is assigned to conduct the session when a request for mediation is submitted.

Section 4226.95. Consent and native language information (redesignated as § 4226.92. Parental consent).

The Department combined the provisions of this section with those of proposed § 4226.98 (relating to parent consent), as well as consent provisions from other sections of the proposed rulemaking, into one section, redesignated

as § 4226.92. The reason for this revision is to consolidate all consent provisions in one section rather than scattering them throughout the final-form rulemaking, for ease of reference.

Redesignated subsection (b) contains the provisions of § 4226.98 in the proposed rulemaking in paragraphs (1) and (4), modified by deleting the reference to a particular form in the introductory clause as unnecessary because of the technical correction to subsection (a)(2); adding the phrase, "or changing"; and deleting reference to § 4226.72(e), since that section was revised and redesignated as subsection (c) of this section. Paragraph (2) was added because it was inadvertently omitted from the proposed rulemaking and paragraph (3) was added at the recommendation of commentators to § 4226.23 (relating to eligibility for Medicaid waiver services). Subsection (c) is redesignated from § 4226.72(e), modified to take into account the need to obtain consent before a service is changed, not just initiated. Subsection (d) is redesignated verbatim from § 4226.98(b) in the proposed rulemaking.

The Department also corrected some technical errors. In subsection (a), it changed "from parents" to "parental" to avoid inconsistency with other regulations. In subsection (a)(1) it struck "or other mode of communication" because this phrase is included in the definition of "native language" in § 4226.5). In subsection (a)(2) it inserted "form" to avoid ambiguity. The Department deleted subsection (b) because this is the definition of "native language" in § 4226.5.

Section 4226.96 (redesignated as § 4226.94). Opportunity to examine records.

Some commentators suggested that the specific applicable Federal procedures should be included in this section. Others recommended that the section be revised to state that families may have access to copies of their records without cost. One commentator expressed concern that the rulemaking is too broadly worded and suggested that the phrase "when appropriate" be added to maintain confidentiality when dealing with situations of abuse or other sensitive issues. Another commentator asked the Department to clarify the meaning of "individual child complaint" in this section and in § 4226.100 (redesignated as § 4226.99. Due process procedures).

Response

The Department finds that it is unnecessary to restate the provisions of the cited regulation in this section. Regarding access to records at no cost, the Federal regulations cited in this section specify in 34 CFR 300.566(a) (relating to fees) that an agency may charge a fee for copies of records "if the fee does not effectively prevent the parents from exercising their right to inspect and review those records." The Department believes that this provision affords parents sufficient protection in exercising their rights.

Regarding the breadth of the language of this section, 34 CFR 300.562(c) (relating to access rights) provides that an "agency may presume that the parent has the authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce." The Department does not have the authority to graft any other exceptions onto the exercise of a Federal right.

An individual child complaint is one that relates specifically to one child and is not a complaint against the system of service.

Section 4226.97. Prior notice; native language (redesignated as § 4226.95. Prior notice).

One commentator suggested listing examples of when communication with parents in their native language would be considered "clearly not feasible" to improve clarity. Another commentator recommended that this section should direct that the notice be "written in language understandable to the public."

Response

For the reasons explained in the response to comments to redesignated § 4226.62 (relating to nondiscriminatory procedures), the Department did not add examples of when communication in the parent's language would "clearly not be feasible." The language recommended by the second commentator is in subsection (c)(1).

The Department redesignated this section as § 4226.95. As noted in the response to comments to § 4226.92 (relating to notice of rights) (deleted on final-form), the Department revised subsection (b) by striking paragraph (3) and replacing it with a new paragraph (3) that specifically identifies the procedural safeguards that must be described in the notice. The Department also added a new paragraph (4), requiring that the notice also include a description of how to file a complaint with the Department.

The Department made several technical changes to this section to conform the section to other changes made in the rulemaking. It added "clearly" in subsection (c)(2) because that word was inadvertently omitted from the proposed rulemaking. It deleted "or other mode of communication" from subsections (d) and (e) in its entirety because these provisions are both included in the definition of "native language" in § 4226.5. Because these provisions were deleted, the Department revised the section heading by likewise deleting "native language." Finally, it changed the wording in subsection (d)(3) to clarify where the written evidence should be maintained.

Section 4226.98. Parent consent (deleted on final-form).

As explained in the response to comments to § 4226.95 (redesignated as § 4226.92) the Department deleted this section, having incorporated the substance of the provisions in redesignated § 4226.92.

Section 4226.99. Parental right to decline service.

The Department redesignated the substance of this section as § 4226.93(a) (relating to parental right to decline service). The Department added § 4226.93(b), which is parallel to subsection (a) but applies to at-risk children rather than infants and toddlers with disabilities, and was inadvertently omitted from the proposed rulemaking.

Section 4226.100. Administrative resolution of individual child complaints by an impartial decisionmaker (redesignated as § 4226.99. Due process procedures).

One commentator objected to the word "timely" as unclear and recommended that it be deleted and a maximum time frame substituted.

Response

After additional internal review, the Department revised this section in several respects.

Because the Department's contractor, not the county MH/MR programs, is responsible for the conduct of due process hearings, the county MH/MR programs cannot establish procedures to ensure the timely resolution of these hearings. Therefore, this section was revised to

require the county MH/MR programs to implement procedures that ensure that requests for due process hearings are not delayed. The time frame for resolution of a due process hearing has been specified as 30 days in § 4226.103(b) (redesignated as § 4226.102(b) (relating to convenience of proceedings; timelines)). The purpose of this section is to require county MH/MR programs to establish procedures at the local level that do not interfere with resolution of due process hearings within 30 days.

Section 4226.101. Parent rights in administrative proceedings (redesignated as § 4226.100. Parental rights in due process hearings).

Two commentators observed that families often cannot afford to retain an attorney and recommended that subsection (b)(1) (redesignated as subsection (b)(2)) be reworded to clarify that families do not need to have counsel and another person at the hearing.

Response

The language in subsection (b)(2) mirrors 34 CFR 303.423(b)(1). The Department disagrees with the suggestion by the commentators that this paragraph requires that a parent be accompanied both by counsel and by other individuals. Instead, this paragraph affords a parent the right to be accompanied either by counsel or by individuals with special knowledge or training, or both. The Department therefore did not make the requested change.

After additional internal review, the Department made several revisions to this section. It changed references to "administrative proceedings" in both the section heading and the text to "due process hearings" because this is the term commonly used. For the same reasons as set forth in the immediately preceding response, the county MH/MR programs are not in a position to "afford" parents the enumerated rights in a due process hearing. As the opposing party at the hearing, the county MH/MR program would be particularly ill-suited for that role. Therefore, the Department revised this section, consistent with the revisions to redesignated § 4226.99, to require the county MH/MR programs to inform parents of their rights.

The Department also revised subsection (a) by changing "children eligible under this chapter" to "children referred or eligible for tracking or early intervention services" to clarify that parents of children who are referred but determined ineligible also have the right to request a due process hearing to challenge that determination. The Department made additional revisions to this subsection to avoid inconsistency with redesignated § 4226.99 as revised.

The Department amended the introductory clause in subsection (b) to conform the language to the revisions to redesignated § 4226.99 and to clarify that only parents who are parties to a due process hearing, rather than involved in some other capacity such as a witness, have the rights listed in this subsection. In response to a recommendation from commentators, the Department added subsection (b)(1). This paragraph enables a parent who requests a due process hearing to obtain an independent MDE if the hearing officer determines that an MDE is needed to resolve the dispute. The remaining paragraphs in this subsection were renumbered accordingly.

Section 4226.102 (redesignated as § 4226.101). Impartial hearing officer.

Some commentators recommended that this section specify the qualifications and duties of the hearing officer who conducts the due process hearings.

Response

The Department concurs and revised subsection (a) and added subsection (b) to specify qualifications and duties, which are consistent with 34 CFR 303.421 (relating to appointment of an impartial person). The Department also added an introductory clause in subsection (c) (redesignated from proposed subsection (a)) to introduce the definition of "impartial." The Department revised subsection (c)(1) by adding "who is the subject of the hearing" to avoid ambiguity and correcting a grammatical error. Finally, the Department redesignated proposed subsection (b) as subsection (d) and made technical changes to conform to the revisions in redesignated § 4226.99.

Section 4226.103 (redesignated as § 4226.102). Convenience of proceedings; timelines.

Some commentators objected to the absence of a timeline for resolving hearing requests. They recommended that this section specify that hearing requests must be decided within 30 days.

Response

The Department concurs and made the recommended change by adding subsection (b). The Department purposely phrased this subsection in the passive voice, since parents may send requests for due process hearings either to the county MH/MR program or directly to the ODR. The 30-day time period begins from the date of receipt by either entity.

Section 4226.104 (redesignated as § 4226.103). Status of a child during proceedings.

One commentator urged the Department to consider addressing the issue of pendency at transition in this section, in addition to having raised the issue in commenting on § 4226.74(9) (redesignated in part as §§ 4226.74(8) and 4226.77).

Response

For the reasons explained in the response to the comments to § 4226.74(8), the Department does not agree that pendency of services at transition to preschool services are appropriately encompassed within these regulations.

The Department revised subsection (a) to clarify that this section applies regardless of the procedural avenue the parent pursues. The Department deleted subsection (c) as duplicative of redesignated § 4226.93. The Department also made technical changes to conform the section to other changes made in the final-form rulemaking.

Section 4226.105 (redesignated as § 4226.96). Surrogate parents.

Several commentators stated that the language of this section unnecessarily limits a foster parent's ability to serve as a surrogate parent for a child in substitute care and suggested that foster parents should be eligible to serve as a surrogate if all requirements in this section are met. One commentator requested clarification of the period of time that qualifies as a long-term relationship in subsection (f)(3) and what constitutes a conflict of interest in subsection (f)(5). Some commentators asked why the provisions that authorize the county MH/MR programs to appoint a surrogate at the request of the

parent under certain circumstances and that protects surrogate parents from liability were omitted. One commentator observed that the responsibilities in subsections (b)(2) and (c) were the same. The same commentator suggested that this section emphasize that surrogacy is not needed only for children in substitute care.

Response

For the reasons explained in the response to comments to the definition of "parent" in § 4226.5, the Department revised subsection (f) (redesignated as § 4226.96(e)) to permit a foster parent to serve as a surrogate if all other requirements of this section are met and the custodial county children and youth agency approves the appointment.

According to advice received from the Office of Special Education Programs of the United States Department of Education, the type of long-term relationship contemplated in proposed subsection (f)(3) is one in which the foster parent has pursued an interest in adoption but is unable to adopt because, for example, the family would lose medical coverage for the child. An example of a disqualifying conflict of interest under subsection (f)(5) is a former member of the Board of an agency providing services to the child who had a dispute with the agency or a current Board member of an agency providing services to the child.

In redesignating this section as § 4226.96, the Department made several revisions. In response to language proposed by commentators and after additional internal review, the Department revised subsection (a) to delineate more clearly the types of situations for which appointment of a surrogate is not only appropriate but necessary. The Department revised subsection (b) by deleting the enumeration to eliminate redundancy. The Department combined subsections (c) and (d) into redesignated subsection (c) for the same reason. The Department added a new subsection (c)(3) to ensure that only persons who are willing to serve as surrogates are appointed. The Department revised subsection (d)(3) (redesignated as § 4226.96(c)(4)) and added subsection (c)(5) to ensure that any State public agency or private agency serving the child or a family member is not selected as a surrogate parent.

The provisions that authorize the county MH/MR programs to appoint a surrogate at the request of the parent under certain circumstances and that protect surrogate parents from liability were omitted from this section because 34 CFR 303.406 (relating to surrogate parents) does not authorize those provisions, and the Department is unwilling to extend surrogacy beyond what is explicitly authorized by Federal law. Because the language of this section itself makes clear that surrogacy is not needed only for children in substitute care, the Department did not revise the section to address that issue.

Other Issues

Some commentators raised global issues not related to a specific section of the final-form rulemaking. These commentators both commended and criticized the Department for adopting much of the language in 34 CFR Chapter 303; urged the Department to consider the proposed rulemaking for Part C that has been withdrawn and questioned how the Department could expect to comply with Federal regulations that have yet to be promulgated; advocated that the Department use the regulations as a means to adopt creative approaches to

service delivery and funding. As with the other comments previously summarized, the Department considered each of these comments in adopting this final-form rulemaking.

The Department corrected typographical or grammatical errors or made other minor technical changes to the definitions of "method," "nursing services," "psychological services" and "speech-language pathology services" in § 4226.5. In addition, the Department redesignated § 4226.42 as § 4226.34 (relating to local interagency coordinating council).

Fiscal Impact

Public Sector—Commonwealth and Local Government

The final-form rulemaking incorporates requirements already imposed under the act, Part C of IDEA and accompanying Federal regulations and the infants, toddlers and families Medicaid waiver approved by the CMS, all of which are currently in place. Therefore, no additional costs or savings are anticipated for the Commonwealth or for local government entities.

Private Sector

In drafting the final-form rulemaking, the Department gave careful consideration to the concerns of some commentators that the proposed rulemaking would have a significant cost impact, particularly on providers of service, because of the preservice and annual staff training requirements. The training requirements received wide support from commentators, including families, advocacy groups and providers.

The Department has an extensive training and technical assistance network through EITA, which provides training at no cost to counties and service providers and agencies. Training sessions are available throughout the year on a Statewide and a regional basis, both in person and through teleconferencing. Also available are local training opportunities that can be designed to meet the needs of a particular county. In addition, the county MH/MR programs receive an annual training allocation from the Department that they may utilize to meet the local needs of their area, including provider staff training. Therefore, the Department anticipates that provider cost increases associated with the training requirements will be minimal and will not impose an undue burden on providers. Cost increases are outweighed by the benefits that well-trained staff will bring to children and families who receive early intervention services.

General Public

There is no anticipated fiscal impact on the general public.

Paperwork Requirements

The final-form rulemaking imposes some additional reporting and paperwork requirements associated with documentation of efforts to exhaust other available resources and recordkeeping of staff training hours. The county MH/MR programs and service coordination providers will be required to maintain and make available records that they have attempted to exhaust other available public and private resources before early intervention funds are expended. The county MH/MR programs and service providers and agencies will also be required to maintain and make available records to confirm that all early intervention personnel have received both preservice and annual training.

Effective Date

The final-form rulemaking will take effect July 1, 2003.

Sunset Date

No sunset date has been set. The regulations will be revised as necessary to remain in compliance with State and Federal law.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 24, 2002, the Department submitted a copy of these final-form regulations to IRRC and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 21, 2002, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the act and the Public Welfare Code.

Order

Acting under the authority of section 201(2) of the Public Welfare Code and sections 105 and 302(a) of the act, the Department orders that:

(a) The regulations of the Department, 55 Pa. Code, are amended by adding §§ 4226.1—4226.6, 4226.11—4226.15, 4226.21—4226.36, 4226.51—4226.56, 4226.61, 4226.62, 4226.71—4226.77 and 4226.91—4226.103 and by deleting §§ 4225.1—4225.4, 4225.11—4225.15, 4225.21—4225.50, 4225.61—4225.64, 4225.71—4225.82, 4225.91—4225.99 and 4225.101—4225.106 to read as set forth in Annex A.

(b) The Secretary of the Department has submitted this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law. The Office of General Counsel and the Office of Attorney General have approved this order and Annex A as to legality and form.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order takes effect on July 1, 2003.

ESTELLE B. RICHMAN,
Acting Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 6016 (December 7, 2002).)

Fiscal Note: Fiscal Note 14-452 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 55. PUBLIC WELFARE

PART VI. MENTAL HEALTH/MENTAL RETARDATION MANUAL

Subpart C. ADMINISTRATION AND FISCAL MANAGEMENT

CHAPTER 4225. (Reserved)

§§ 4225.1—4225.4. (Reserved).

§§ 4225.11—4225.15. (Reserved).

§§ 4225.21—4225.50. (Reserved).

§§ 4225.61—4225.64. (Reserved).

§§ 4225.71—4225.82. (Reserved).

§§ 4225.91—4225.99. (Reserved).

§§ 4225.101—4225.106. (Reserved).

CHAPTER 4226. EARLY INTERVENTION SERVICES

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GENERAL PROVISIONS

§ 4226.1. Policy.

Early intervention services and supports are provided to families and infants and toddlers with disabilities and at-risk children to maximize the child's developmental potential. Service planning and delivery are founded on a partnership between families and early intervention personnel which is focused on meeting the unique needs of the child, addressing the concerns and priorities of each family and building on family and community resources.

§ 4226.2. Purpose.

This chapter establishes administrative, financial and eligibility requirements, standards for personnel and service delivery, and procedural protections for the Department's early intervention program.

§ 4226.3. Applicability.

This chapter applies to county MH/MR programs that provide early intervention services and to public and private service providers and agencies that contract with a county MH/MR program to provide early intervention services.

§ 4226.4. Penalties for noncompliance.

(a) The failure to comply with this chapter so that needs of at-risk children and infants and toddlers with disabilities are not being adequately met, shall subject the county MH/MR program to penalties consistent with section 512 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4512), including loss or delay of early intervention funding to the county MH/MR program.

(b) Appeals from Department action taken in accordance with subsection (a) shall be made by the county MH/MR program in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

§ 4226.5. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Assessment—The ongoing procedures used throughout the period of a child's eligibility under this chapter to identify the following:

(i) The child's unique strengths and needs and the services appropriate to meet those needs.

(ii) The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of its child.

Assistive technology device—An item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to

increase, maintain or improve the functional capabilities of infants and toddlers with disabilities.

Assistive technology service—A service that directly assists an infant or toddler with a disability or the infant or toddler's family in the selection, acquisition or use of an assistive technology device. The term includes:

(i) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation in the infant or toddler's customary environment.

(ii) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by infants and toddlers with disabilities.

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices.

(iv) Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.

(v) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that infant or toddler's family.

(vi) Training or technical assistance for professionals, including individuals providing early intervention services, or other individuals who provide services to or are otherwise substantially involved in the major life functions of infants and toddlers with disabilities.

At-risk child—An individual under 3 years of age:

- (i) Whose birth weight is under 1,500 grams.
- (ii) Who was cared for in a neonatal intensive care unit.
- (iii) Who was born to a chemically dependent mother and referred by a physician, health care provider or parent.
- (iv) Who is seriously abused or neglected, as substantiated and referred by the county children and youth agency under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law).
- (v) Who has confirmed dangerous levels of lead poisoning as set by the Department of Health.

Audiology services—Includes the following:

- (i) Identification of hearing loss, using audiological screening techniques.
- (ii) Determination of the range, nature and degree of hearing loss and communication functions, by use of audiological evaluation procedures.
- (iii) Referral for medical and other services necessary for the habilitation or rehabilitation of hearing loss.
- (iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services to address hearing loss.
- (v) Provision of services for prevention of hearing loss.
- (vi) Determination of the need for individual amplification, including selecting, fitting and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

Child—An individual under 3 years of age.

County MH/MR program—An MH/MR program established by a county or two or more counties acting in concert which includes a complex array of services provid-

ing a continuum of care in the community for infants and toddlers with disabilities and at-risk children.

Culturally competent—Conducted or provided in a manner that shows awareness of and is responsive to the beliefs, interpersonal styles, attitudes, language and behavior of children and families who are referred for or receiving services.

Department—The Department of Public Welfare of the Commonwealth.

Early intervention services—Developmental services that meet the requirements of this chapter and:

- (i) Are provided under public supervision.
- (ii) Are provided at no cost to families.
- (iii) Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family related to enhancing the infant or toddler's development in one or more of the following areas:
 - (A) Physical development, including vision and hearing.
 - (B) Cognitive development.
 - (C) Communication development.
 - (D) Social or emotional development.
 - (E) Adaptive development.
- (iv) Are provided in conformity with an IFSP.
- (v) Include, but are not limited to, the following:
 - (A) Family training, counseling and home visits.
 - (B) Special instruction.
 - (C) Speech-language pathology services.
 - (D) Occupational therapy.
 - (E) Physical therapy.
 - (F) Psychological services.
 - (G) Service coordination.
 - (H) Medical services only for diagnostic or evaluation purposes.
 - (I) Early identification and assessment services.
 - (J) Health services necessary to enable an infant or toddler with a disability to benefit from other early intervention services.
 - (K) Social work services.
 - (L) Vision services.
 - (M) Assistive technology devices and assistive technology services.
 - (N) Transportation and related costs.
 - (O) Audiology services.
 - (P) Nursing services.
 - (Q) Nutrition services.
- (vi) Are provided by qualified personnel, including, but not limited to, the following:
 - (A) Special educators.
 - (B) Speech-language pathologists.
 - (C) Occupational therapists.
 - (D) Physical therapists.
 - (E) Psychologists.
 - (F) Social workers.

- (G) Nurses.
- (H) Nutritionists.
- (I) Family therapists.
- (J) Orientation and mobility specialists.
- (K) Pediatricians and other physicians.
- (L) Early interventionists.
- (M) Service coordinators.
- (N) Audiologists.

Evaluation—Procedures used by qualified personnel to determine a child's initial and continuing eligibility for tracking or early intervention services.

Family training, counseling and home visits—Services provided by social workers, psychologists or other qualified personnel, as appropriate, to assist the family of an infant or toddler with a disability in understanding the special needs of and enhancing the development of the infant or toddler.

Health services—Services necessary to enable an infant or toddler with a disability to benefit from other early intervention services, while an infant or toddler is receiving another early intervention service.

- (i) The term includes the following:

(A) Clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags.

(B) Consultation by physicians with other service providers concerning the special health care needs of an infant or toddler with a disability that will need to be addressed in the course of providing other early intervention services.

- (ii) The term does not include the following:

(A) Services that are surgical in nature (such as cleft palate surgery, surgery for club foot or the shunting of hydrocephalus).

(B) Services that are purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(C) Devices necessary to control or treat a medical condition.

(D) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

IFSP—Individualized family service plan—A written plan for providing early intervention services to an infant or toddler with a disability and the infant or toddler's family.

Infant or toddler with a disability—An individual under 3 years of age who needs early intervention services because the individual meets one or more of the eligibility criteria specified in § 4226.22(a) (relating to eligibility for early intervention services).

Location—The actual place or places where a service is or will be provided.

MH/MR—Mental health/mental retardation.

Medical services only for diagnostic or evaluation purposes—Services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

Method—How a service is provided, including whether the service is given directly to the infant or toddler with a disability, with family or child care participation or without family or child care participation, or whether the service is provided as instruction to the family or caregiver.

Multidisciplinary—Involving two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities and development of the IFSP.

Native language—The language or mode of communication normally used by the parent of a child. If the parent is deaf or blind, or has no written language, the mode of communication is that normally used by the parent (such as sign language, Braille or oral communication).

Natural environments—Settings that are natural or normal for a child's age peers who have no disabilities, including the home and community settings in which children without disabilities participate.

Nursing services—Includes the following:

(i) Assessing health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems.

(ii) Providing nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development.

(iii) Administering medications, treatments and regimens prescribed by a licensed physician.

Nutrition services—Includes the following:

- (i) Conducting individual assessments in the following:

(A) Nutritional history and dietary intake.

(B) Anthropometrical, biochemical and clinical variables.

(C) Feeding skills and feeding problems.

(D) Food habits and food preferences.

(ii) Developing and monitoring appropriate plans to address the nutritional needs of infants and toddlers with disabilities, based on the findings of the assessments in subparagraph (i).

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

Occupational therapy—Services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior and play, and sensory, motor and postural development, which are designed to improve the functional ability of the infant or toddler to perform tasks in home, school and community settings, and include the following:

- (i) Identification, assessment and intervention.

(ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills.

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development or loss of functional ability.

Parent—A natural or adoptive parent; a guardian; a legal custodian, excluding a county children and youth agency; a person acting as a parent of a child (such as a grandparent or stepparent with whom the child lives); or a surrogate parent, including a foster parent, appointed under § 4226.96 (relating to surrogate parents).

Personally identifiable information—Information that would make it possible to identify a particular child or family, including the following:

- (i) The name of the child, the child's parent or other family member.
- (ii) The address of the child or family.
- (iii) A personal identifier, such as the child's or parent's Social Security number.
- (iv) A list of personal characteristics or other information that would make it possible to identify the child or family with reasonable certainty.

Physical therapy—Services to address the promotion of sensorimotor function of an infant or toddler with a disability through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaptation, which include the following:

- (i) Screening, evaluation and assessment to identify movement dysfunction.
- (ii) Obtaining, interpreting and integrating information appropriate to program planning to prevent, alleviate or compensate for movement dysfunction and related functional problems.
- (iii) Providing individual and group services or treatment to prevent, alleviate or compensate for movement dysfunction and related functional problems.

Psychological services—Includes the following:

- (i) Administering psychological and developmental tests and other assessment procedures.
- (ii) Interpreting assessment results.
- (iii) Obtaining, integrating and interpreting information about child behavior, and child and family conditions related to learning, mental health and development.
- (iv) Planning and managing a program of psychological services, including psychological counseling for infants and toddlers with disabilities and their parents, family counseling, consultation on child development, parent training and education programs.

Qualified—Meeting State-approved or State-recognized certification, licensing, registration or other comparable requirements that apply to the area in which the person is providing early intervention services.

Referral—Oral or written action by an individual to direct information about a child or the child's family to another individual or entity, requesting that the receiving individual or entity take action on behalf of the child and family.

Service coordination—Activities carried out by a service coordinator in accordance with § 4226.52 (relating to service coordination activities) to assist and enable a child and the child's family to benefit from the rights and procedural safeguards and to receive the services that are authorized under this chapter.

Social work—Includes the following:

- (i) Making home visits to evaluate the living conditions of an infant or toddler with a disability and patterns of parent-child interaction.
- (ii) Preparing a social or emotional developmental assessment of an infant or toddler with a disability within the family context.
- (iii) Providing individual and family or group counseling to the parent and other family members of an infant

or toddler with a disability, and appropriate social skill-building activities to the infant or toddler and the infant or toddler's parent.

(iv) Working to address those problems in the living situation of an infant or toddler with a disability and the infant or toddler's family (home, community, and any center where early intervention services are provided) that impede the maximum use of early intervention services.

(v) Identifying, mobilizing and coordinating community resources and services to enable an infant or toddler with a disability and the infant or toddler's family to receive maximum benefit from early intervention services.

Special instruction—Includes the following:

- (i) Designing the learning environments and activities that promote the acquisition of skills by an infant or toddler with a disability in a variety of developmental areas, including cognitive processes and social interaction.
- (ii) Curriculum planning, including the planned interaction of personnel, materials and time and space, that leads to achieving the outcomes on the IFSP.
- (iii) Providing the family with information, skills and support related to enhancing the skill development of the infant or toddler with a disability.

(iv) Working with the infant or toddler with a disability and family to enhance the infant or toddler's development.

Speech-language pathology services—Includes the following:

- (i) Identification of communicative or swallowing disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills.
- (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of communicative or swallowing disorders and delays in development of communication skills.

(iii) Provision of services for the habilitation, rehabilitation or prevention of communicative or swallowing disorders and delays in development of communication skills.

Tracking—A systematic process to monitor the development of at-risk children to determine whether they have become eligible for early intervention services under this chapter.

Transportation and related costs—Includes the expenses incurred in travel (such as mileage or travel by taxi, common carrier or other means or tolls and parking expenses) that are necessary to enable an infant or toddler with a disability and the infant or toddler's family to receive another early intervention service.

Vision services—Includes the following:

- (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays and abilities.
- (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders.
- (iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training and additional training necessary to activate visual motor abilities.

§ 4226.6. Waiver of regulations.

(a) The Department may, upon application by a county MH/MR program and a showing of good cause as specified in subsection (b), waive specific requirements contained in this chapter if the waiver will not result in violation of another provision of Federal or State law and will not jeopardize receipt of Federal funding. A waiver may be granted only when the health, safety and well-being of infants and toddlers with disabilities and other children and their families and the quality of services is not adversely affected.

(b) The Department may waive one or more requirements of this chapter upon written request for a waiver from a county MH/MR program on a form prescribed by the Department, which includes:

(1) The specific regulatory sections for which a waiver is requested.

(2) A detailed description of the unusual or special circumstances that justify the waiver for the county MH/MR program.

(3) An explanation of how the county MH/MR program will ensure that the health, safety and well-being of infants and toddlers with disabilities and other children and their families will be protected if the waiver is granted.

(4) A description of how the county MH/MR program will meet the objective of the requirement in another way if the waiver is granted.

(c) A waiver granted under this section will be effective for a specified time period and may be revoked if the Department determines that the county MH/MR program has failed to comply with the conditions of the waiver.

(d) The purpose, applicability and definitions sections of this chapter may not be waived.

FINANCIAL MANAGEMENT

§ 4226.11. Financial administration.

Chapter 4300 (relating to county mental health and mental retardation fiscal manual) applies to the county MH/MR program for purposes of identifying allowable costs and for the general financial administration of early intervention services.

§ 4226.12. Medicaid waiver funds.

The county MH/MR program shall expend supplemental grant funds for the provision of early intervention services to infants and toddlers with disabilities and their families under the home and community waiver known as the Infant, Toddlers and Families Medicaid Waiver approved by the Department of Health and Human Services under section 1915(c) of the Social Security Act (42 U.S.C.A. § 1396n(c)) to the extent that eligible services and eligible infants and toddlers can be identified and the infants' and toddlers' parents consent to participate in the waiver.

§ 4226.13. Payor of last resort.

(a) Unless otherwise permitted or mandated by Federal law, State early intervention funds may not be used to satisfy a financial commitment for early intervention services if another public or private funding source is available to pay for the services.

(b) Unless otherwise permitted or mandated by Federal law, private insurance may be used with the consent of the parent to pay for early intervention services as long

as such use will not result in a cost to the family, including but not limited to the following:

(1) A decrease in available lifetime coverage or any other benefit under an insurance policy.

(2) An increase in premiums or the discontinuation of the policy.

(3) An out-of-pocket expense such as the payment of a deductible amount in filing a claim.

(c) Services on the IFSP may not be denied or delayed because another public or private funding source, including Medicaid, is unavailable.

§ 4226.14. Documentation of other funding sources.

(a) The county MH/MR program shall develop and maintain a written policy that sets forth the procedures used to identify and exhaust all other public and private sources of funding for early intervention services, as required in § 4226.13 (relating to payor of last resort).

(b) The service coordinator shall maintain written documentation that attempts have been made to exhaust all other private and public funding sources available to an infant or toddler with a disability and the infant or toddler's family, as required by § 4226.13, in the infant or toddler's record, in accordance with § 4226.36(d) and (e) (relating to child records).

§ 4226.15. Interim payments.

(a) When necessary to prevent a delay in the receipt of early intervention services by an infant or toddler with a disability or the infant or toddler's family, State early intervention funds may be used to pay the provider of services pending reimbursement from the funding source that has ultimate responsibility for the payment.

(b) The county MH/MR program shall seek reimbursement from the responsible funding source to cover the interim payments made for early intervention services.

GENERAL REQUIREMENTS

§ 4226.21. Nondelegation of responsibilities.

(a) The county MH/MR program may contract with another agency for delivery of early intervention services under this chapter.

(b) If the county MH/MR program contracts with another agency as permitted in subsection (a), the county MH/MR program retains responsibility for compliance with the requirements of this chapter and shall ensure compliance by all agencies under contract to provide early intervention services.

§ 4226.22. Eligibility for early intervention services.

(a) The county MH/MR program shall ensure that early intervention services are provided to all children who meet one or more of the following eligibility criteria:

(1) A developmental delay, as measured by appropriate diagnostic instruments and procedures, of 25% of the child's chronological age in one or more of the developmental areas of cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development.

(2) A developmental delay in one or more of the developmental areas of cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development, as documented by test perfor-

mance of 1.5 standard deviations below the mean on accepted or recognized standard tests for infants and toddlers.

(3) A diagnosed physical or mental condition which has a high probability of resulting in a developmental delay as specified in paragraphs (1) and (2), including a physical or mental condition identified through an MDE, conducted in accordance with § 4226.61 (relating to MDE), that is not accompanied by delays in a developmental area at the time of diagnosis.

(b) In addition to the diagnostic tools and standard tests specified in subsection (a)(1) and (2), informed clinical opinion shall be used to establish eligibility, especially when there are no standardized measures or the standardized measures are not appropriate for a child's chronological age or developmental area. Informed clinical opinion makes use of qualitative and quantitative information to assist in forming a determination regarding difficult-to-measure aspects of current developmental status and the potential need for early intervention.

§ 4226.23. Eligibility for Medicaid waiver services.

(a) *Enrollment.* The county MH/MR program shall ensure that infants and toddlers with disabilities enrolled in the Infant, Toddlers and Families Medicaid Waiver meet the level of care criteria for an intermediate care facility/mental retardation (ICF/MR) or intermediate care facility/other related conditions (ICF/ORC) as set forth in subsection (b).

(b) Eligibility criteria for ICF/MR or ICF/ORC level of care.

(1) Minimum eligibility for ICF/MR or ICF/ORC level of care is established by one of the following:

(i) A licensed psychologist, certified school psychologist or licensed physician shall certify that the infant or toddler has significantly subaverage intellectual functioning which is documented by one of the following:

(A) Performance that is more than two standard deviations below the mean as measured on a standardized general intelligence test.

(B) Performance that is slightly higher than two standard deviations below the mean as measured on a standardized general intelligence test during a period when the infant or toddler manifests serious impairments of adaptive behavior.

(ii) A qualified professional who meets the criteria in 42 CFR 483.430(a) (relating to condition of participation: facility staffing), shall certify that the infant or toddler has other related conditions, which may include cerebral palsy and epilepsy as well as other conditions except mental illness, such as autism, that result in impairments of general intellectual functioning or adaptive behavior and require early intervention services.

(2) In addition to the certification required in paragraph (1), a qualified professional who meets the criteria in 42 CFR 483.430(a) shall certify that the infant or toddler has impairments in adaptive behavior, which are likely to continue for at least 12 months, as documented by an assessment of adaptive functioning which shows one of the following:

(i) Significant limitations in meeting the standards of maturation, learning, personal independence or social responsibility of the infant's or toddler's age and cultural group, as evidenced by a minimum of a 50% delay in one or a 33% delay in two of the following developmental areas:

- (A) Cognitive development.
- (B) Physical development, including vision and hearing.
- (C) Communication development.
- (D) Social and emotional development.
- (E) Adaptive development.
- (ii) Substantial functional limitation in three or more of the following areas of major life activities:
 - (A) Self-care.
 - (B) Receptive and expressive language.
 - (C) Learning.
 - (D) Mobility.
 - (E) Self-direction.
 - (F) Capacity for independent living.
 - (G) Economic self-sufficiency.

(c) *Financial eligibility.* The county MH/MR program shall cooperate with the county assistance office in determining the initial and continuing financial eligibility of an infant or toddler with a disability and the infant or toddler's family for waiver services.

§ 4226.24. Comprehensive child find system.

(a) The county MH/MR program shall develop a child find system that will ensure that:

(1) All at-risk children and infants and toddlers with disabilities in the geographical area of the county MH/MR program are identified, located and evaluated.

(2) An effective method is developed and implemented to determine which at-risk children and infants and toddlers with disabilities are receiving needed early intervention services, and which are not receiving those services.

(b) The county MH/MR program, with the assistance of the local interagency coordinating council, shall coordinate the child find system with all other major efforts to locate and identify at-risk children and infants and toddlers with disabilities, which include the following:

(1) The local preschool program authorized under Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1411—1419).

(2) Maternal and Child Health Programs authorized under Title V of the Social Security Act (42 U.S.C.A. §§ 701—709).

(3) The Early Periodic Screening, Diagnosis and Treatment (EPSDT) Program under Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396v).

(4) Programs authorized under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 15001—15083).

(5) Head Start Programs authorized under the Head Start Act (42 U.S.C.A. §§ 9831—9852).

(6) The Supplemental Security Income Program under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383f).

(c) The county MH/MR program, with the assistance of the local interagency coordinating council, shall take steps to ensure that:

(1) There is not unnecessary duplication of effort by the various agencies involved in the local child find system.

(2) It coordinates and makes use of resources available through the local public agencies to implement the child find system in an effective manner.

(d) The child find system shall include procedures for use by primary referral sources for referring a child to the county MH/MR program for the following:

(1) Evaluation and assessment, in accordance with §§ 4226.61 and 4226.62 (relating to MDE; and nondiscriminatory procedures).

(2) As appropriate, the provision of services, in accordance with § 4226.72(a) or § 4226.76 (relating to procedures for IFSP development, review and evaluation; and provision of services before MDE is completed).

(e) The procedures required in subsection (a)(1) shall:

(1) Provide for an effective method of making referrals by primary referral sources.

(2) Ensure that referrals are made no more than 2 working days after a child has been identified, unless otherwise permitted or mandated by Federal law.

(f) The term "primary referral sources" in subsection (d) includes the following:

(1) Hospitals, including prenatal and postnatal care facilities.

(2) Physicians.

(3) Parents.

(4) Day care programs.

(5) Local educational agencies.

(6) Public health facilities.

(7) Other social service agencies.

(8) Other health care providers.

(g) Timelines to act on referrals are as follows:

(1) Once the county MH/MR program receives a referral, it shall appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the county MH/MR program shall do one of the following:

(i) Complete the evaluation activities in § 4226.61 and hold an IFSP meeting, in accordance with § 4226.72.

(ii) Complete the evaluation activities in § 4226.61 and develop a plan for further assessment and tracking.

§ 4226.25. At-risk children.

(a) A child identified as an at-risk child through the initial MDE conducted in accordance with § 4226.61 (relating to MDE) is eligible for tracking as specified in § 4226.26 (relating to tracking system).

(b) If a child is referred for an MDE to determine whether the child is an at-risk child and the family declines the MDE, with parental consent the child may be deemed eligible for tracking as specified in § 4226.26.

§ 4226.26. Tracking system.

(a) The county MH/MR program shall develop a system for tracking at-risk children.

(b) The tracking system shall include the following:

(1) Procedures for contacting the at-risk child and family by telephone, in writing or through a face-to-face meeting at least once every 3 months after the child is referred to the tracking system, unless an MDE conducted in accordance with § 4226.61 (relating to MDE) recommends and the parent agrees to more frequent

contact. The parent may also request less frequent contact and may request no further contact.

(2) The use of a standardized developmental checklist as approved by the Department to review the child's development to determine the need for one of the following:

(i) Further tracking.

(ii) Further evaluation or reevaluation for eligibility for early intervention services.

(c) The county MH/MR program shall maintain written documentation of all contacts made through the tracking system in the child's record.

§ 4226.27. Monitoring responsibilities.

(a) The county MH/MR program shall be responsible for monitoring early intervention services, including service coordination, which the county MH/MR program provides directly or through contract, including services provided in another county or state.

(b) Monitoring shall include the measurement and assurance of compliance with this chapter and of the quality of services provided.

(c) The county MH/MR program shall conduct the monitoring required by this section on an ongoing basis but at least once every 12 months and maintain written documentation of the results of the monitoring for 4 years or until any audit or litigation is resolved.

§ 4226.28. Self-assessment reviews.

The county MH/MR program, in consultation with the local interagency coordinating council and the county MH/MR program advisory board, shall conduct an early intervention self-assessment review at least once every 3 years, including assessment of family satisfaction, using the tool provided by and adhering to the procedures established by the Department.

§ 4226.29. Preservice training.

(a) Early intervention personnel who work directly with at-risk children or infants and toddlers with disabilities, including personnel hired through contract, shall receive training before working alone with at-risk children or infants and toddlers with disabilities or their families in the following areas:

(1) Orientation to the early intervention service system of the Department, including the purpose and operation of the State and local interagency coordinating councils.

(2) The requirements of this chapter.

(3) The duties and responsibilities of their position.

(4) Methods for working with families utilizing family-centered approaches to encourage family involvement and consider family preferences.

(5) The interrelated social, emotional, health, developmental and educational needs of children.

(6) The availability and use of available local and State community resources.

(7) The principles and methods applied in the provision of services in the natural environment.

(8) The fiscal operations of the early intervention service system and the specific funding sources.

(9) Within 120 days of the date of hire, fire safety, emergency evacuation, first aid techniques and child cardiopulmonary resuscitation.

(b) Records of preservice training for all personnel shall be kept in the county MH/MR program's or provider's personnel files for as long as the individual is employed or under contract or for 4 years, whichever is longer, or until any audit or litigation is resolved.

§ 4226.30. Annual training.

(a) Early intervention personnel who work directly with at-risk children and infants and toddlers with disabilities, including personnel hired through contract, shall have at least 24 hours of training annually, in addition to any preservice training, relevant to early intervention services, child development, community resources or services for children with disabilities. Specific areas shall include cultural competence, mediation, procedural safeguards and universal health procedures.

(b) The training specified in § 4226.29(a)(9) (relating to preservice training) shall be renewed annually, unless there is a formal certification for first aid or cardiopulmonary resuscitation by a recognized health source that is valid for more than 1 year, in which case the time period specified on the certification applies.

(c) Records of all annual training shall be kept in the county MH/MR program's or provider's personnel files for as long as the person is employed or under contract or for 4 years, whichever is longer, or until any audit or litigation is resolved.

§ 4226.31. Child Protective Services Law.

County MH/MR programs and service providers and agencies that contract with county MH/MR programs to deliver early intervention services shall comply with the provisions of 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) and regulations in Chapter 3490 (relating to protective services), regarding background clearances for all employees who will have direct contact with children.

§ 4226.32. Reporting and record retention.

(a) The county MH/MR program shall submit reports to the Department on a monthly, annual and periodic basis related to program operations, financial expenditures and disbursements, service delivery and demographic information, in the format and within the timelines as the Department may require.

(b) The Department will provide advance notice to the county MH/MR program of the specific reports to be submitted and the deadlines for submission.

(c) The county MH/MR program is responsible for keeping records and affording access to those records as the Department may find necessary to assure compliance with this chapter, the accuracy of reports or the proper disbursement of funds allocated under this chapter. Unless otherwise specified in this chapter for specific records, records shall be kept for 4 years or until any audit or litigation is resolved.

§ 4226.33. Traditionally underserved groups.

The county MH/MR program shall ensure that:

(1) Traditionally underserved groups, including minority, low-income and rural families, are provided the opportunity to be active participants in the local interagency coordinating councils and parent advisory groups and to participate in the development and implementation of the IFSPs for their infants and toddlers with disabilities.

(2) Families have access to culturally competent services within their local geographical areas.

§ 4226.34. Local interagency coordinating council.

The county MH/MR program shall ensure that:

(1) A local interagency coordinating council is established and maintained, which shall include parents and service providers and agencies.

(2) The local interagency coordinating council is authorized to advise and comment on the development of local interagency agreements.

(3) The local interagency coordinating council is authorized to communicate directly with the Department of Education, the Department of Health, the Department of Public Welfare and the State Interagency Coordinating Council regarding the local interagency agreement and any other matters pertaining to this chapter.

§ 4226.35. Confidentiality of information.

(a) The county MH/MR program shall ensure the protection of all personally identifiable information collected, used or maintained under this chapter.

(b) The county MH/MR program shall ensure that parents are informed of their rights to written notice of and written consent to the exchange of personally identifiable information among agencies in accordance with 34 CFR 300.560—300.576 (relating to confidentiality of information); 34 CFR Part 99 (relating to the family educational rights and privacy); and section 305(d) of the Early Intervention Services System Act (11 P. S. § 875-305(d)).

§ 4226.36. Child records.

(a) The county MH/MR program and every provider that contracts with a county MH/MR program to deliver early intervention services shall maintain a separate file for each child referred or accepted for tracking or early intervention services.

(b) Entries in a child's record shall be legible, dated and signed by the person making the entry.

(c) Each child's record shall contain, as applicable:

(1) Personally identifiable information.

(2) Intake information.

(3) Child evaluation and assessment information.

(4) IFSPs.

(5) Service support plans specifying the therapy services to be provided.

(6) Letters of medical necessity.

(7) Service coordination and service delivery activity logs.

(8) Health records.

(9) Notices issued under § 4226.95 (relating to prior notice).

(10) Other information, as specified in this chapter.

(d) Information in the child's record shall be kept for at least 4 four years or until any audit or litigation is resolved.

(e) A child's record shall be kept for a least 4 years following the child's discharge from service or until any audit or litigation is resolved.

PERSONNEL

§ 4226.51. Provision of service coordination.

(a) As soon as possible after the referral of a child and family to determine eligibility for early intervention services, the county MH/MR program, either directly or through contract, shall assign a service coordinator to the family.

(b) Each child and the child's family shall be provided with one service coordinator who is responsible for serving as the single point of contact in helping the parent to obtain the services and assistance needed and for the activities specified in § 4226.52 (relating to service coordination activities).

§ 4226.52. Service coordination activities.

Service coordination is an active, ongoing process that includes the following activities:

- (1) Coordinating the performance of initial and ongoing evaluations and assessments.
- (2) Referring at-risk children to the tracking system and tracking at-risk children.
- (3) Facilitating and participating in the development, implementation, review and evaluation of IFSPs.
- (4) Assisting the family of an infant or toddler with a disability in gaining access to the early intervention services and other services identified on the IFSP.
- (5) Facilitating the timely delivery of early intervention services.
- (6) Assisting the family in identifying available service providers and facilitating communication with and between the family and the service provider.
- (7) Coordinating and monitoring the delivery of early intervention services.
- (8) Informing the family of the availability of advocacy services.
- (9) Assisting the family in arranging for the infant or toddler with a disability to receive medical and health services, if the services are necessary, and coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the infant or toddler needs or is being provided.
- (10) Offering the family opportunities and support for the infant or toddler with a disability to participate in community activities with other children.
- (11) Informing the family of appropriate community resources.
- (12) Facilitating the development of a transition plan as part of the IFSP.

§ 4226.53. Service coordinator requirements and qualifications.

- (a) A county MH/MR program shall employ a minimum of one service coordinator directly or through contract.
- (b) Before performing service coordination activities, a service coordinator shall demonstrate knowledge and understanding about the following:
 - (1) At-risk children and infants and toddlers with disabilities.
 - (2) Part C of IDEA (20 U.S.C.A. §§ 1431—1445) and accompanying regulations (currently codified at 34 CFR Chapter 303 (relating to early intervention program for infants and toddlers with disabilities)), and the Early Intervention Services System Act (11 P.S. §§ 875-101—875-503).
 - (3) The nature and scope of services available under this chapter and the funding sources available.
 - (c) A service coordinator shall have one of the following groups of minimum qualifications:

(1) A bachelor's degree from an accredited college or university which includes 12 college credits in early intervention, early childhood special education, early childhood education, child development, special education, family counseling, family studies, social welfare, psychology or other comparable social sciences, and 1 year of full-time or full-time-equivalent experience working with or providing counseling to children, families or individuals with disabilities.

(2) An associate's degree, or 60 credit hours, from an accredited college or university in early intervention, early childhood special education, early childhood education, child development, special education, family counseling, family studies, social welfare, psychology, or other comparable social sciences, and 3 years of full-time or full-time-equivalent experience working with or providing counseling to children, families or individuals with disabilities.

(3) Certification by the Pennsylvania Civil Service Commission as meeting the qualifications of a Case-worker 2 or 3 classification.

§ 4226.54. Early interventionist responsibilities.

An early interventionist is responsible for the following:

- (1) Designing the learning environments and activities that promote the acquisition of skills by an infant or toddler with a disability in a variety of developmental areas, including cognitive processes and social interaction.
- (2) Providing the family with information, skills and support related to enhancing the skill development of the infant or toddler with a disability.
- (3) Working with the infant or toddler with a disability and family to enhance the infant or toddler's development.

§ 4226.55. Early interventionist qualifications.

An early interventionist shall have one of the following groups of minimum qualifications:

(1) A bachelor's degree from an accredited college or university in early intervention, early childhood special education, early childhood education, child development, special education or family studies, and 1 year of full-time or full-time-equivalent experience working directly with preschool children with disabilities and their families or a university-supervised or college-supervised student practicum or teaching experience with young children with disabilities and their families.

(2) A bachelor's degree from an accredited college or university which includes 15 credit hours in early intervention, early childhood special education, early childhood education, child development, special education or family studies; and 1 year of full-time or full-time-equivalent experience working directly with preschool children with disabilities and their families; and demonstrated knowledge, understanding and skills needed to perform the functions specified in § 4226.54 (relating to early interventionist responsibilities).

§ 4226.56. Effective date of personnel qualifications.

Sections 4226.53 and 4226.55 (relating to service coordinator requirements and qualifications; and early interventionist qualifications) apply to service coordinators and early interventionists hired or promoted on and after July 1, 2003.

EVALUATION AND ASSESSMENT**§ 4226.61. MDE.**

(a) *Requirements for MDE.* The county MH/MR program shall ensure that:

(1) Each child referred for evaluation receives a timely, comprehensive MDE and a family-directed assessment of the needs of the child's family to assist in the development of the child.

(2) The initial MDE is conducted by personnel independent of service provision.

(3) An MDE is conducted for each infant or toddler with a disability at least annually.

(4) A written MDE report is provided to the parent within 30 calendar days of the MDE.

(b) *Evaluation and assessment of the child.*

(1) The evaluation and assessment of each referred child shall:

(i) Be conducted by personnel trained to utilize evaluation and assessment methods and procedures.

(ii) Be based on informed clinical opinion.

(iii) Include the following:

(A) A review of pertinent records related to the child's current health status and medical history.

(B) An evaluation of the child's level of functioning in each of the developmental areas of cognitive development; physical development, including vision and hearing; communication development; social and emotional development; and adaptive development.

(C) An assessment of the unique needs of the child in terms of each of the developmental areas in clause (B), including the identification of services appropriate to meet those needs.

(2) The annual MDE will include the participation of the family, the service coordinator, anyone whom the parent would like to invite and at least one other qualified professional.

(3) The MDE required by this subsection may be based on review and analysis of existing documentation of medical history, if the parent agrees and the qualified professionals in exercising their judgment conclude that the elements specified in paragraph (1) can be determined through such review and analysis.

(c) *Family assessment.*

(1) The family assessment shall be family directed and designed to determine the resources, priorities and concerns of the family and to identify the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

(2) A family assessment shall be voluntary on the part of the family.

(3) If a family assessment is carried out, the assessment shall:

(i) Be conducted by personnel trained to utilize assessment methods and procedures.

(ii) Be based on information provided by the family through a personal interview.

(iii) Incorporate the family's description of its resources, priorities and concerns related to enhancing the child's development.

(d) *Timelines.*

(1) Except as provided in paragraph (2), the initial MDE of each child (including the family assessment) shall be completed within sufficient time to enable an IFSP to be developed within the 45-day time period in § 4226.24(g) (relating to comprehensive child find system).

(2) The county MH/MR program shall develop procedures to ensure that if exceptional circumstances make it impossible to complete the initial MDE, including the family assessment, within the timeline specified in paragraph (1) (for example, if a child is ill), the county MH/MR program will do the following:

(i) Document those circumstances in the child's record.

(ii) Develop and implement an interim IFSP consistent with § 4226.76 (relating to provision of services before MDE is completed).

§ 4226.62. Nondiscriminatory procedures.

Each county MH/MR program shall adopt nondiscriminatory procedures for the evaluation and assessment of children and families that ensure, at a minimum, that:

(1) Tests and other evaluation materials and procedures are administered in the native language of the parent, unless it is clearly not feasible to do so.

(2) Assessment and evaluation procedures and materials are selected and administered so as not to be racially or culturally discriminatory.

(3) No single procedure is used as the sole criterion for determining a child's eligibility under this chapter.

(4) Evaluations and assessments are conducted by qualified personnel.

IFSPs**§ 4226.71. General.**

(a) Each county MH/MR program shall adopt policies and procedures regarding IFSPs.

(b) The IFSP shall:

(1) Be developed in accordance with §§ 4226.72 and 4226.73 (relating to procedures for IFSP development, review and evaluation; and participants in IFSP meetings and periodic reviews).

(2) Be based on the evaluation and assessment described in § 4226.61 (relating to MDE).

(3) Include the matters specified in § 4226.74 (relating to content of the IFSP).

(4) Be developed prior to funding source decisions.

(c) The county MH/MR program shall ensure that an IFSP is developed and implemented for each infant or toddler with a disability.

§ 4226.72. Procedures for IFSP development, review and evaluation.

(a) For a child who has been evaluated for the first time and determined to be eligible for early intervention services, a meeting to develop the initial IFSP shall be conducted within the 45-day time period in § 4226.24(g) (relating to comprehensive child find system).

(b) A review of the IFSP for an infant or toddler with a disability and the infant or toddler's family shall be conducted every 6 months, or more frequently if conditions warrant or if the family requests such a review. The review may be conducted by a meeting or by another means, such as conference call or written reports, that is

acceptable to the parent and other participants. The purpose of the review is to determine:

- (1) The degree to which progress toward achieving the outcomes is being made.
- (2) Whether modification or revision of the outcomes or services is necessary.
- (c) A meeting shall be conducted at least annually to evaluate the IFSP for an infant or toddler with a disability and the infant or toddler's family and, as appropriate, to revise its provisions. The results of current evaluations conducted under § 4226.61 (relating to MDE), and other information available from the ongoing assessment of the infant or toddler and family, shall be used in determining what services are needed and will be provided.

(d) IFSP meetings shall be conducted as follows:

- (1) In settings and at times that are convenient to the family.
- (2) In the native language of the parent, unless it is clearly not feasible to do so.
- (3) In a manner that ensures that the early intervention services to be provided to an infant or toddler with a disability are selected in collaboration with the parent.
- (e) IFSP meeting arrangements shall be made with and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend, but no later than 5 days before the scheduled meeting date.

§ 4226.73. Participants in IFSP meetings and periodic reviews.

(a) Each initial meeting and each annual meeting to evaluate the IFSP shall include the following participants:

- (1) The parent of the infant or toddler with a disability.
- (2) Other family members, as requested by the parent, if feasible to do so.
- (3) An advocate or person outside of the family, if the parent requests that the person participate.
- (4) The service coordinator who has been working with the family since the initial referral for evaluation, or who has been designated by the county MH/MR program to be responsible for implementation of the IFSP.
- (5) A person directly involved in conducting the evaluations and assessments in § 4226.61 (relating to MDE).
- (6) Persons who will be providing services to the infant or toddler with a disability or family, as appropriate.
- (b) If a person listed in subsection (a)(5) is unable to attend a meeting, arrangements shall be made for the person's involvement through another means, including one or more of the following:
 - (1) Participating in a telephone conference call.
 - (2) Having a knowledgeable authorized representative attend the meeting.
 - (3) Making pertinent records available at the meeting.

(c) Each periodic review shall include the participation of persons listed in subsection (a)(1)–(4). If conditions warrant, provisions shall be made for the participation of other representatives identified in subsection (a).

§ 4226.74. Content of the IFSP.

The IFSP shall be in writing and the standardized format will contain:

- (1) *Information about the status of the infant or toddler with a disability.*
 - (i) A statement of the present levels of physical development (including vision, hearing and health status), cognitive development, communication development, social or emotional development, and adaptive development of the infant or toddler with a disability.
 - (ii) The statement in subparagraph (i) shall be based on professionally acceptable objective criteria.
- (2) *Family information.* With the concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the infant or toddler with a disability.
- (3) *Outcomes.* A statement of the major outcomes expected to be achieved for the infant or toddler with a disability and the family, and the criteria, procedures and timelines used to determine:
 - (i) The degree to which progress toward achieving the outcomes is being made.
 - (ii) Whether modification or revision of the outcomes or services is necessary.
- (4) *Early intervention services.*
 - (i) A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler with a disability and the family to achieve the outcomes required in paragraph (3), including:
 - (A) The frequency, intensity and method of delivering the services.
 - (B) The natural environments in which early intervention services will be provided and, if a service will be provided in a location other than a natural environment, a justification of the extent to which each service will not be provided in a natural environment and the location in which it will be provided.
 - (C) The payment arrangements, if any.
 - (D) The unit cost for each service.
 - (ii) As used in this section, "frequency" and "intensity" are the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or a group basis.
- (5) *Other services.*
 - (i) A statement of medical and other services that the infant or toddler with a disability needs but that are not required under this chapter and of the funding sources to be used to pay for those services, or the steps that will be taken to secure those services through public or private sources.
 - (ii) The requirement in subparagraph (i) does not apply to routine medical services (for example, immunizations and "well-baby" care), unless the infant or toddler with a disability needs those services and the services are not otherwise available or being provided.
- (6) *Dates; duration of services.*
 - (i) The projected dates for initiation of early intervention services in paragraph (4), which shall be as specified in § 4226.75(b) (relating to implementation of the IFSP).

(ii) If an early intervention service is projected to start later than 14 days after the IFSP is completed as permitted by § 4226.75(b), the date and the reasons for the later date.

(iii) The anticipated duration of early intervention services.

(7) *Service coordinator.* The identity of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(8) *Transition from early intervention services.* A statement of the steps to be taken to support the transition of the toddler with a disability to preschool services under Part B of IDEA (20 U.S.C.A. §§ 1411–1419) or other appropriate services, which shall include at least the activities specified in § 4226.77 (relating to transition from early intervention services).

§ 4226.75. Implementation of the IFSP.

(a) To the maximum extent appropriate to meet the needs of the infant or toddler with a disability, as determined by the IFSP team, early intervention services shall be provided in the infant or toddler's natural environments.

(b) Early intervention services shall be initiated as soon as possible after the IFSP is completed at the meeting described in § 4226.72 (relating to procedures for IFSP development, review and evaluation) but no later than 14 calendar days from the date the IFSP is completed, unless a later date is recommended by the team, including the family, based on the needs of the infant or toddler with a disability, or if requested by the family.

§ 4226.76. Provision of services before MDE is completed.

Early intervention services for an infant or toddler with a disability and the infant or toddler's family may commence before the completion of the evaluation and assessment in § 4226.61 (relating to MDE), if the following conditions are met:

(1) Parental consent is obtained.

(2) An interim IFSP is developed that includes the following:

(i) The name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons.

(ii) The early intervention services that have been determined to be needed immediately by the infant or toddler with a disability and the infant or toddler's family.

(3) The evaluation and assessment are completed within the time period specified in § 4226.61(d)(1), unless exceptional circumstances exist as set forth in § 4226.61(d)(2).

§ 4226.77. Transition from early intervention services.

(a) The county MH/MR program shall adopt policies and procedures to ensure a smooth transition for toddlers receiving early intervention services to preschool or other appropriate services, which meet the requirements of this section.

(b) For every toddler with a disability, the county MH/MR program shall:

(1) Notify the local educational agency for the area in which the toddler resides that the toddler will shortly reach 3 years of age.

(2) In the case of a toddler who may be eligible for preschool services under Part B of IDEA (20 U.S.C.A. §§ 1411–1419), with the approval of the toddler's family, convene a conference among the county MH/MR program, the family and the local educational agency at least 90 days (and if all parties agree, up to 6 months) before the toddler's third birthday, to discuss services that the toddler may receive.

(3) In the case of a toddler who may not be eligible for preschool services under Part B of IDEA, with the approval of the toddler's family, make reasonable efforts to convene a conference among the county MH/MR program, the family and providers of other appropriate services for toddlers who are not eligible for preschool services under Part B of IDEA, to discuss appropriate services the toddler may receive.

(4) If a toddler's third birthday occurs during the school year, review the program options available to the toddler for the period from the third birthday through the remainder of the school year.

(5) Establish a transition plan in consultation with the toddler's family.

(c) The IFSP team of every toddler with a disability shall take steps to ensure the toddler's smooth transition from early intervention services, which shall include at least the following:

(1) Discussions with, and training of, the toddler's parent regarding future placements and other matters related to the toddler's transition.

(2) Preparation of the toddler for changes in service delivery, including activities to help the toddler adjust to, and function in, a new setting.

(3) With parental consent, transmission of information about the toddler, including evaluation and assessment information and copies of the toddler's IFSPs, to the local educational agency, to ensure continuity of services.

(d) The county MH/MR program shall develop inter-agency agreements with the local educational agency responsible for providing preschool programs under Part B of IDEA, to ensure coordination on transition matters.

PROCEDURAL SAFEGUARDS

§ 4226.91. General responsibility for procedural safeguards.

A county MH/MR program is responsible for adopting procedural safeguards that meet the requirements of this chapter, except §§ 4226.101 and 4226.102 (relating to impartial hearing officer; and convenience of proceedings; timelines).

§ 4226.92. Parental consent.

(a) The following requirements apply for parental consent:

(1) The parent shall be fully informed of all information relevant to the activity for which consent is sought, in the parent's native language.

(2) The parent shall be informed and agree in writing to the carrying out of the activity for which consent is sought, and the consent form shall describe that activity and list the records (if any) that will be released and to whom.

(3) The parent shall be informed that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) Written parental consent shall be obtained before:

(1) Conducting the initial evaluation and assessment under § 4226.61 (relating to MDE).

(2) Referring an at-risk child to the tracking system under § 4226.26 (relating to tracking system).

(3) Determining eligibility for Medicaid waiver services in accordance with § 4226.23 (relating to eligibility for Medicaid waiver services).

(4) Initiating or changing early intervention services.

(c) Before an early intervention service is provided or changed, the contents of the IFSP shall be fully explained to the parent. If the parent does not consent to the delivery of a particular early intervention service or withdraws consent after first providing it, that service may not be provided. Those early intervention services to which the parent consented shall be provided. If the parent does not consent to a proposed change that reduces or terminates early intervention services, the requirements of § 4226.103 (relating to status of a child during proceedings) apply.

(d) If the parent does not consent, the county MH/MR program shall make reasonable efforts to ensure that the parent:

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available.

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

§ 4226.93. Parental right to decline service.

(a) The parent of an infant or toddler with a disability may determine whether to accept or decline any early intervention service offered to the infant or toddler or the family and may decline a service after first accepting it, without jeopardizing the provision of other early intervention services.

(b) The parent of an at-risk child may accept or decline referral of the child to the tracking system under § 4226.26 (relating to tracking system) without jeopardizing the referral at a later time.

§ 4226.94. Opportunity to examine records.

In accordance with the confidentiality procedures in Federal regulations in 34 CFR 300.560—300.576 (relating to confidentiality of information), the parent of a child referred or eligible for tracking or early intervention services shall be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child and any other records about the child and the family.

§ 4226.95. Prior notice.

(a) Written prior notice shall be given to the parent of a child referred or eligible for tracking or early intervention services before a county MH/MR program proposes, or refuses, to initiate or change the identification, evaluation or placement of the child, or the provision of early intervention services to the child and the family.

(b) The notice shall be in sufficient detail to inform the parent about the following:

(1) The action that is being proposed or refused.

(2) The reasons for taking the action.

(3) The right to request one or all of the following, including a description of the procedures and rights that apply to each:

(i) Conflict resolution, as described in § 4226.97 (relating to conflict resolution).

(ii) Mediation, as described in § 4226.98 (relating to mediation).

(iii) A due process hearing, as described in § 4226.99 (relating to due process procedures).

(4) The right to file a complaint with the Department, including a description of how to file a complaint and timelines for filing the complaint.

(c) The notice shall be:

(1) Written in language understandable to the general public.

(2) Provided in the native language of the parent, unless it is clearly not feasible to do so.

(d) If the native language of the parent is not a written language, the county MH/MR program shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent in the parent's native language.

(2) The parent understands the notice.

(3) Written evidence that the requirements of this subsection have been met is maintained in the child's record.

§ 4226.96. Surrogate parents.

(a) Each county MH/MR program shall ensure that the rights of a child referred or eligible for tracking or early intervention services are protected by the appointment of a surrogate parent if one of the following applies:

(1) A parent cannot be identified.

(2) The whereabouts of an identified parent, after reasonable efforts, cannot be discovered.

(3) The child is in the legal custody of a county children and youth agency and one of the following applies:

(i) The birth parents cannot be identified.

(ii) The whereabouts of the birth parents, after reasonable efforts, cannot be discovered.

(iii) The birth parents are deceased and the child has no other parent.

(iv) The parental rights of the birth parents have been terminated and the child has no other parent.

(b) The duty of the county MH/MR program under subsection (a) includes establishing procedures for determining whether the child needs a surrogate parent and appointing a surrogate parent to the child.

(c) In complying with subsection (b), the county MH/MR program shall select a surrogate parent who:

(1) Has no interest that conflicts with the interests of the child the surrogate represents.

(2) Has knowledge and skills that ensure adequate representation of the child.

(3) Is willing to assume the responsibilities of being a surrogate parent.

(4) Is not an employee of an agency or persons providing early intervention services or other services to the child or to any family members of the child.

(5) Is not an employee of any State agency.

(d) A person who otherwise qualifies to be a surrogate parent under subsection (c) is not an employee solely because the surrogate is paid by a public agency to serve as a surrogate parent.

(e) The foster parent of a child in substitute care, who meets the criteria in subsection (c), may serve as a surrogate parent for the child with the approval of the county children and youth agency that has legal custody of the child.

(f) A surrogate parent may represent a child in all matters related to the following:

(1) The evaluation and assessment of the child.

(2) The development and implementation of the child's IFSPs, including annual evaluation and periodic review meetings.

(3) The ongoing provision of early intervention services to the child.

(4) Other rights established under this chapter.

§ 4226.97. Conflict resolution.

(a) The county MH/MR program shall establish a system of conflict resolution whereby parents, providers, as appropriate, or other parties may request a meeting with the county administrative staff to discuss and resolve issues relating to the provision of early intervention services to an infant or toddler with a disability and the infant or toddler's family.

(b) The county MH/MR program shall establish conflict resolution procedures to ensure that:

(1) Requests for conflict resolution may be made either orally or in writing.

(2) A conflict resolution meeting shall be held within 7 calendar days of the request.

(3) When a parent requests mediation under § 4226.98 (relating to mediation) or a due process hearing under § 4226.99 (relating to due process procedures), the county MH/MR program shall offer the parent a conflict resolution meeting with the county MH/MR administrator or a designee, and the meeting shall be held within 7 calendar days of receipt of the request, unless the parent declines the offer of conflict resolution. If the parent agrees to participate, the meeting may not delay the processing of the request for mediation or for a due process hearing.

(4) When a resolution or agreement is reached at the meeting, the IFSP or other documents shall be revised accordingly.

(5) If no resolution or agreement is reached at the meeting, all other procedural safeguards continue to be available.

(6) The conflict resolution process does not impede or deny other rights under this chapter.

(7) The conflict resolution process is voluntary on the part of the parents, and parents do not have to participate in the process before exercising other procedural rights.

§ 4226.98. Mediation.

(a) The county MH/MR program shall adopt procedures that afford a party who presents a complaint about any matter relating to the identification, evaluation or place-

ment of the child, or the provision of appropriate early intervention services, the opportunity to resolve the dispute through a mediation process.

(b) The procedures shall ensure that the mediation process is:

(1) Voluntary on the part of the parents.

(2) Offered to a parent who requests a due process hearing under § 4226.99 (relating to due process procedures).

(3) Not used to deny or delay a parent's right to a due process hearing under § 4226.99, or to deny or impede other rights afforded under this chapter.

(4) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The mediation session shall be scheduled within 10 calendar days of the request for mediation or a due process hearing and shall be held in a location that is convenient to the parties to the dispute.

(d) An agreement reached by the parties to the dispute in the mediation session shall be set forth in a written mediation agreement.

(e) Discussions that occur during the mediation session shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation may be required to sign a confidentiality pledge before the session begins.

(f) The county MH/MR program shall establish procedures to encourage the use and explain the benefits of the mediation process, whereby a parent who chooses not to use the mediation process may request a meeting, at a time and location convenient to the parent, with a disinterested party or one of the following:

(1) A parent training and information center or community parent resource center.

(2) An alternative dispute resolution entity.

§ 4226.99. Due process procedures.

Each county MH/MR program shall implement procedures to ensure that the resolution of requests for due process hearings by parents concerning any of the matters in § 4226.95(a) (relating to prior notice) on behalf of an individual child is not delayed.

§ 4226.100. Parental rights in due process hearings.

(a) Each county MH/MR program shall ensure that the parents of children referred or eligible for tracking or early intervention services are informed of the rights in subsection (b) in each due process hearing requested to resolve any of the matters in § 4226.95(a) (relating to prior notice) on behalf of an individual child.

(b) A parent who is a party to a due process hearing has the following rights:

(1) To obtain an independent MDE conducted in accordance with § 4226.61 (relating to MDE) at no cost if the parent disagrees with the results of the MDE obtained through the county MH/MR program and the hearing officer determines that the MDE is needed to assist in the resolution of the dispute.

(2) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services.

(3) To present evidence and confront, cross-examine and compel the attendance of witnesses.

(4) To prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least 5 days before the proceeding.

(5) To obtain a written or electronic verbatim transcription of the proceeding.

(6) To obtain written findings of fact and decisions.

§ 4226.101. Impartial hearing officer.

(a) The impartial hearing officer appointed to conduct the due process hearing shall have knowledge of the requirements of this chapter, the Early Intervention Services System Act (11 P. S. §§ 875-101—875-503) and Part C of IDEA (42 U.S.C.A. §§ 1431—1445) and accompanying regulations (currently codified in 34 CFR Part 303 (relating to early intervention program for infants and toddlers with disabilities)), as well as the needs of, and services available for, at-risk children and infants and toddlers with disabilities and their families.

(b) The duties of the impartial hearing officer include:

(1) To preside over the presentation of evidence and each party's position, examine all presented evidence and render a timely decision.

(2) To make available a record of the proceedings.

(3) To forward a written decision to all parties to the proceedings.

(c) As used in this section, "impartial" means that the appointed hearing officer:

(1) Is not an employee of an agency or other entity involved in the provision of early intervention services to or care of the child who is the subject of the hearing.

(2) Does not have a personal or professional interest that would conflict with the hearing officer's objectivity in conducting the hearing and rendering a decision.

(d) A person who otherwise qualifies under this section is not an employee of an agency solely because the person is paid to conduct the due process hearing.

§ 4226.102. Convenience of proceedings; timelines.

(a) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parent.

(b) The due process hearing shall be conducted and a written decision mailed to each party no later than 30 days after the parent's request for a hearing is received by the county MH/MR program.

§ 4226.103. Status of a child during proceedings.

(a) During the pendency of a conflict resolution, mediation or due process proceeding, unless the county MH/MR program and parent of the infant or toddler with a disability otherwise agree, the infant or toddler shall continue to receive the early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this chapter, the infant or toddler with a disability shall receive those services that are not in dispute.

[Pa.B. Doc. No. 03-345. Filed for public inspection February 28, 2003, 9:00 a.m.]

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 139]

Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 7, 2003, meeting, proposed the following amendment:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide dates for the 2003-2004 hunting license year.

This proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the January 7, 2003, meeting of the Commission. Comments can be sent until April 4, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend § 139.4 to provide for seasons and bag limits for the 2003-2004 license year. These seasons and bag limits were proposed under sections 322(c)(1) and 2102(b)(1) of the code (relating to powers and duties of commission; and regulations).

2. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although the 2003-2004 seasons and daily season and possession limits are essentially the same as set in 2002-2003, they will now be based on the new wildlife management units (units). The new units will apply only to the hunting and trapping of bear, beaver, bobcat, deer, pheasant, quail and turkey within this Commonwealth. An additional amendment will include expanded hunting opportunities for small game hunting. Under this proposed rulemaking, the small game seasons for rabbit, pheasant and bobwhite quail will begin Saturday, October 18, the same time as the seasons for squirrel and ruffed grouse, to give rabbit, pheasant and bobwhite quail hunters 2 additional weeks of hunting. Another change will include a change in the dates of the elk season to November 10—15, which is a week earlier than the previous two seasons.

Section 322(c)(1) of the code specifically empowers the Commission to "... fix seasons ... and daily season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits. These two provisions provide the statutory authority for the proposed rulemaking.

3. Regulatory Requirements

These proposed seasons and bag limits would establish when and where it is lawful to hunt and trap various game species and place limits on the numbers that can be legally taken.

4. Persons Affected

Persons wishing to hunt and trap in this Commonwealth would be affected by these seasons and bag limits.

5. Cost and Paperwork Requirements

The proposed new seasons and bag limits would not result in any additional cost either to the Commission or to hunters and furtakers.

6. Effective Date

The effective dates are July 1, 2003, to June 30, 2004.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-154. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the existing text of § 139.4, which currently appears at 58 Pa. Code pages 139-3—139-12, serial pages (290197)—(290206) and replace it with the following text, which has been printed in regular type to enhance readability.)

§ 139.4. Seasons and bag limits for the license year.

(SEASONS AND BAG LIMITS TABLE)

2003-2004 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT,

FIELD POSSESSION LIMIT AND SEASON LIMIT

OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

<i>Species</i>	<i>Limit</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 11	Oct. 13	6	12

<i>Species</i>	<i>Limit</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species)		Oct. 18 Dec. 15 Dec. 26	and and Nov. 29 Dec. 23 Feb. 7, 2004	6	12
Ruffed Grouse—(Statewide)		Oct. 18 Dec. 15 Dec. 26	and and Nov. 29 Dec. 23 Jan. 10, 2004	2	4
Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING"					
Rabbits, Cottontail		Oct. 18 Dec. 15 Dec. 26	and and Nov. 29 Dec. 23 Feb. 7, 2004	4	8
Ringneck Pheasant—Male only in Wildlife Management Units 1A, 2A, 2B, 2C, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C & 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 11	Oct. 13	2	2
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C & 3D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 11	Oct. 13	2	2
Ringneck Pheasant—Male only in Wildlife Management Units 1A, 2A, 2B, 2C, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C & 5D		Oct. 18	Nov. 29	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C & 3D		Oct. 18 Dec. 15 Dec. 26	and and Nov. 29 Dec. 23 Feb. 7, 2004	2	4
<i>Species</i>		<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all wildlife management units except in wildlife management units 4A, 4B, 5A, 5B, 5C & 5D where the season is closed.		Oct. 18	Nov. 29	4	8

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Hares (Snowshoe Rabbits) or Varying Hares	Dec. 26	Jan. 3, 2004	1	2
Woodchucks (Groundhog)	No closed season except during the antlered and antlerless deer season and until 12 noon daily during the spring gobbler turkey season.			Unlimited
<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Turkey—Male or Female			1	1
Wildlife Management Units 1A, 2A & 2B	Nov. 1	Nov. 22		
Wildlife Management Unit 1B	Nov. 1	Nov. 15		
Wildlife Management Units 2C, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D & 4E	Nov. 1	Nov. 22		
Wildlife Management Units 5A & 5B	Closed to fall turkey hunting			
Wildlife Management Unit 5C & 5D	Nov. 1	Nov. 8		
Turkey (Spring Gobbler) Statewide Bearded Bird only	May 1, 2004	May 29, 2004	1	1

MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the Federal Register on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.
- (c) Subject to approval by the United States Fish and Wildlife Service, an early and late season for Canada geese will be held as defined in § 141.25.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 4 and Dec. 26	Nov. 30 and April 4, 2004	Unlimited	
Starlings and English Sparrows	No closed season except during the antlered and antlerless deer seasons and until 12 noon daily during the spring gobbler turkey season			Unlimited

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
FALCONRY				
Squirrels—(Combined species)	Sept. 1	Mar. 31, 2004	6	12
Quail	Sept. 1	Mar. 31, 2004	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2004	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2004	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2004	1	2
Ringneck Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2004	2	4

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

DEER

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>	<i>Field Possession Limit</i>
Deer, Antlered—(Statewide) ¹ (Archery—Bows and Arrows Only)	Oct. 4	Nov. 15	1	One antlered.
	Dec. 26	Jan. 10, 2004		
Deer, Antlerless—(Statewide) (Archery—Bows and Arrows Only)	Oct. 4	Nov. 15	An antlerless deer with each required antlerless license.	
	Dec. 26	Jan. 10, 2004		
Deer, Regular Antlered—(Statewide) ¹	Dec. 1	Dec. 13	1	One antlered.
Deer, Antlerless only—(Statewide) Only Junior and Senior License Holders, ² Disabled Person Permit (to use a vehicle) Holders and Residents serving on active duty in the U.S. Armed Forces, or in the U.S. Coast Guard, with required antlerless license	Oct. 23	Oct. 25	An antlerless deer with each required antlerless license.	
Deer, Regular Antlerless—(Statewide)	Dec. 1	Dec. 13	An antlerless deer with each required antlerless license.	
Deer, Antlerless only—(Statewide) (Muzzleloading season)	Oct. 18	Oct. 25	An antlerless deer with each required antlerless license.	
Deer, Antlered or Antlerless—(Statewide) ¹ (Flintlock Muzzleloading season)	Dec. 26	Jan. 10, 2004	One antlered, or one antlerless—plus an additional antlerless deer with each required antlerless license.	
Deer, Antlerless in Wildlife Management Units 2B, 5C & 5D	Dec. 26	Jan. 10, 2004	An antlerless deer with each required antlerless license.	
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)	Hunting is permitted on days established by the United States Department of the Army.		An antlerless deer with each required antlerless license.	

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>	<i>Field Possession Limit</i>
BEAR				
Bear, any age—(Statewide)	Nov. 24	Nov. 26	1	1 ⁴
Bear, any age in Wildlife Management Unit 3D	Dec. 1	Dec. 6	1	1 ⁴
ELK				
Elk, Antlered	Nov. 10	Nov. 15	1	1
Elk, Antlerless	Nov. 10	Nov. 15	1	1

FURTAKING—TRAPPING

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Minks and Muskrats—(Statewide)	Nov. 22	Jan. 10, 2004	Unlimited	
Beaver—(Statewide)	Dec. 26	Mar. 31, 2004		
Wildlife Management Units 1A, 1B, 2F & 2G			20	20
Wildlife Management Unit 3A, 3B, 3C & 3D			20	40
Wildlife Management Units 2A, 2B, 2C, 2D, 2E, 4A, 4B, 4C, 4D & 4E			10	10
Wildlife Management Units 5A, 5B, 5C & 5D			6	6
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels —(Statewide)	Oct. 19	Feb. 21, 2004	Unlimited	
Bobcat ³ Wildlife Management Units 2F, 2G, 3A, 3B, 3C & 3D	Oct. 19	Feb. 21, 2004	1	1

FURTAKING—HUNTING

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Coyotes—(Statewide)	No closed season. Coyotes may be taken from the first day to the last day inclusive of any deer or bear season only by persons who possess a valid furtaker's license and wears 250 square inches of daylight fluorescent orange-colored material in a 360 degree arc from 2 hours before sunrise to 2 hours after sunset or by persons lawfully engaged in hunting deer or bear and have a valid tag, or during the spring gobbler turkey season by persons who have a valid spring turkey tag and meet fluorescent orange and shot size requirements.		Unlimited	

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Opossums, Skunks, Weasels— (Statewide)	No closed season. These species may not be hunted prior to 12 noon during the spring gobbler turkey season.			
Raccoons and Foxes—(Statewide)	Oct. 18	Feb. 21, 2004	Unlimited	
Bobcat ³ Wildlife Management Units 2F, 2G, 3A, 3B, 3C & 3D	Oct. 18	Feb. 21, 2004	1	1

No open seasons on other wild birds or wild mammals.

¹ Only one antlered deer (buck) may be taken during the hunting license year.

² Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

³ Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit.

⁴ Only one bear may be taken during the hunting license year.

[Pa.B. Doc. No. 03-346. Filed for public inspection February 28, 2003, 9:00 a.m.]

[58 PA. CODE CHS. 139 AND 141]

Seasons and Bag Limits; Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 7, 2003, meeting, proposed the following amendments:

Amend §§ 139.2, 141.45 and 141.62 (relating to definitions; turkey; and beaver trapping), add § 139.17 (relating to wildlife management units) and delete §§ 141.21, 141.46 and 141.64 (relating to hen ringneck pheasant; turkey management areas; and furbearer management areas) to implement a uniform wildlife management unit (WMU) system.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the January 7, 2003, meeting of the Commission. Comments can be sent until April 4, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend §§ 139.2 and 141.45, add § 139.17 and delete §§ 141.21, 141.46 and 141.64 to implement a uniform wildlife management unit (WMU) system.

2. Purpose and Authority

Wildlife populations are not equally distributed or abundant across this Commonwealth. Accordingly, the Commission has regulated the harvest of species using species-specific management units made up of multiple counties. The use of different species-specific units and clusters of counties for delineating management units has, in the past, created complexity and confusion for hunters and trappers and agency staff. To alleviate some of these problems, the wildlife management staff took a critical look at current species management units to

evaluate the feasibility of implementing a uniform WMU system for improved resource management and hunter and trapper use.

Using data solicited and incorporated from central office and field staff within the agency, the Commission was able to generate a single, uniform WMU map for all species by incorporating landscape, human population, land ownership and wildlife data to set readily identifiable boundaries. Using recognizable physical features on the landscape as boundaries rather than intangible boundaries, such as county lines, simplifies the WMU system for both users and resource managers. Once the WMUs are incorporated, the individual pheasant area maps, turkey management area maps and furbearer management area maps will no longer be required.

Section 322(c) of the code (relating to powers and duties of commission) specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits for any species of game or wildlife." Section 322(c)(4) of the code specifically authorizes the Commission to "define geographic limitations or restrictions." Section 2102(a) of the code (relating to regulations) authorizes the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting ..." These provisions provide the statutory basis for the proposed rulemaking.

3. Regulatory Requirements

The proposed rulemaking simplifies the current management areas system for users and resource managers by creating a single, uniform management system for all species with boundaries using recognizable physical features on the landscape.

4. Persons Affected

Persons who wish to hunt deer, ringneck pheasant and turkey and trap furbearers will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-155. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 58. RECREATION****PART III. GAME COMMISSION****CHAPTER 139. SEASONS AND BAG LIMITS****§ 139.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Antlered deer—

(i) In [**the counties of Armstrong, Beaver, Butler, Crawford, Erie, Indiana, Lawrence, Mercer, Washington and Westmoreland**] **Wildlife Management**

Units 1A, 1B, 2A and 2D, a deer having four or more points to one antler.

(ii) In [**the counties of Allegheny, Bucks, Chester, Delaware, Montgomery and Philadelphia**] **Wildlife Management Units 2B, 5C and 5D**, a deer having two or more points to one antler, or with one antler 3 inches or more in length.

(iii) In all other [**counties**] **wildlife management units**, a deer having three or more points to one antler.

(iv) In all [**counties**] **wildlife management units**, [**only**] junior license holders, disabled person permit (to use a vehicle) holders and residents serving on active duty in the United States Armed Forces, or in the United States Coast Guard, a deer having two or more points to one antler, or with one antler 3 inches or more in length.

* * * * *

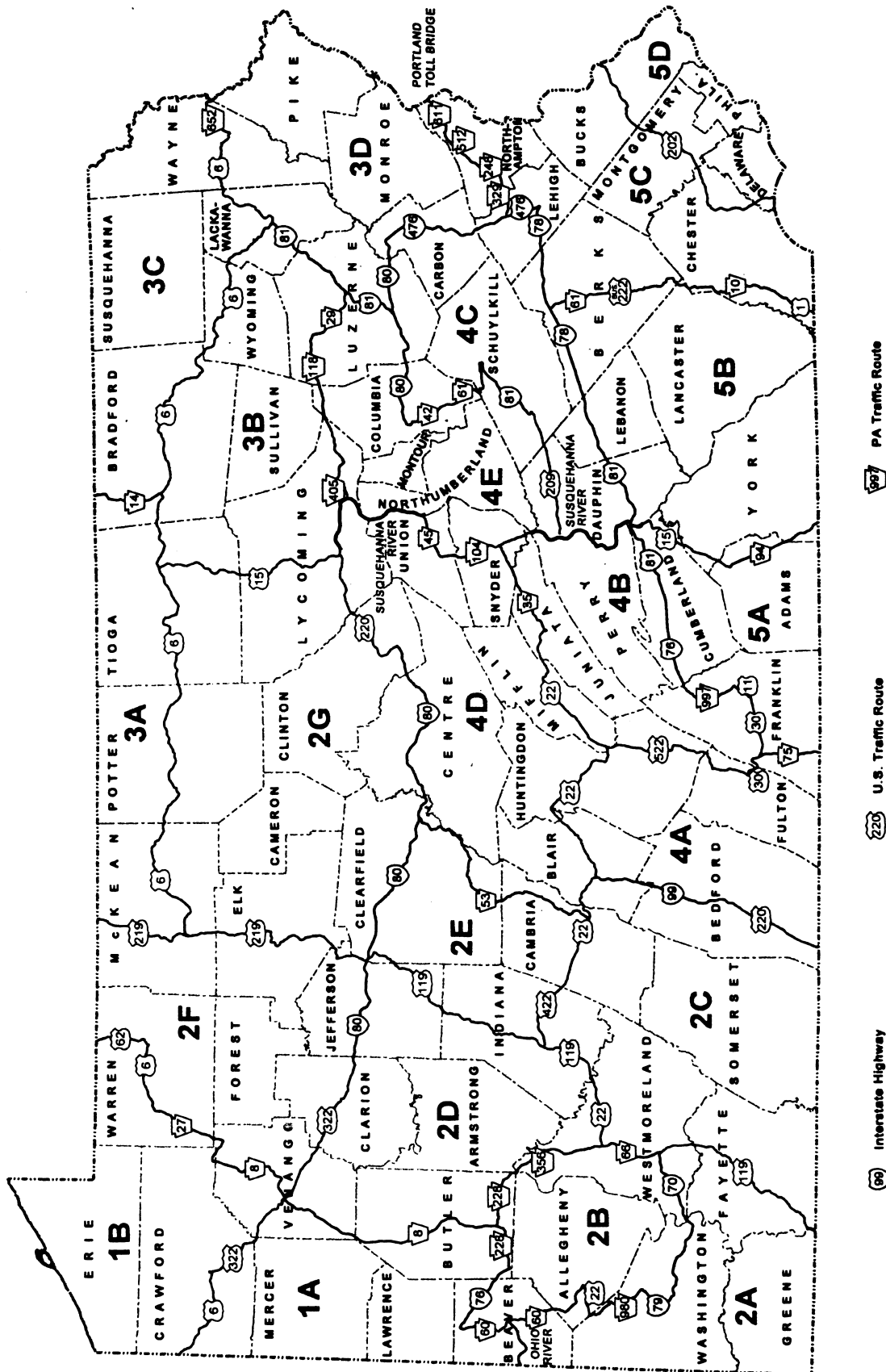
§ 139.17. Wildlife management units.

(a) **The divisional line between two or more wildlife management units shall be the center of the highway, natural water course or other natural boundary.**

(b) **The outline map of Pennsylvania sets forth wildlife management units.**

(See map of Pennsylvania Wildlife Management Units)

WILDLIFE MANAGEMENT UNITS



CHAPTER 141. HUNTING AND TRAPPING**Subchapter B. SMALL GAME****§ 141.21. [Hen ringneck pheasant] (Reserved).**

[(a) *Name.* The area shall be known and referred to as hen ringneck pheasant shooting area.

(b) *Description.* The outline map of the hen ringneck pheasant shooting area sets forth the boundaries. See Appendix B for the map of the pheasant shooting area.]

Subchapter C. BIG GAME**§ 141.45. Turkey.**

(a) While hunting wild turkey it is unlawful to:

* * * * *

(4) Use or possess rifles or single projectile ammunition, except arrows, in [**Turkey Management Areas 1-A, 1-B and 9-B**] **Wildlife Management Units 1A, 1B, 2A, 2B, 5B, 5C and 5D.**

(5) Move about or relocate during the fall season without wearing a minimum of 100 square inches of daylight fluorescent orange-colored material on the head or in such a manner so it is visible in a 360° arc in a [**turkey management area**] **wildlife management unit** limited to shotguns and bows and arrows only.

(6) Move about or relocate during the fall season in a [**turkey management area**] **wildlife management unit** not limited to shotguns and bows and arrows only, without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc, except stationary turkey hunters may, in lieu of the 250 square inch requirement, place a band containing a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of their location so it is visible in a 360° arc.

* * * * *

§ 141.46. [Turkey management areas] (Reserved).

[(a) **The divisional line between two or more turkey management areas shall be the center of the highway, natural water course or other natural boundary.**

(b) **The outline map of Pennsylvania sets forth turkey management areas. See Appendix C for the map.]**

Subchapter D. TRAPPING**§ 141.62. Beaver trapping.**

* * * * *

(b) *Unlawful acts.* It is unlawful to:

* * * * *

(2) Except in [**Furbearer Management Area No. 3**] **Wildlife Management Units 3B, 3C and 3D**, place, check, reset or tend a trap or snare on an established beaver dam or beaver house, or within 15 feet of either a dam, or a house. Measurement shall be from directly above the trap or snare, across the water, ice or land to the nearest point of the structure.

* * * * *

(4) In an area where beavers are known to inhabit, set, tend or operate more than a combined total of 20 traps or

snare no more than 10 of which may be traps. No more than two of the traps may be body gripping traps except in [**Furbearer Management Area No. 3 and the counties of McKean, Potter, and Tioga**] **Wildlife Management Units 3A, 3B, 3C and 3D** where the two body gripping trap limit does not apply.

* * * * *

§ 141.64. [Furbearer management areas] (Reserved).

[(a) **The divisional line between two or more Furbearer Management Areas shall be the center of the highway, natural watercourse or other boundary as set forth on the map.**

(b) **The outline map of Pennsylvania in Appendix D sets forth the Furbearer Management Areas]**

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the maps in Appendices B—D, which currently appear at 58 Pa. Code pages 141-22—141-26, serial pages (279264)—(279268), and the map in Appendix F, which currently appears at 58 Pa. Code page 141-29, serial page (290367), and replace them with the map in § 139.17.)

[Pa.B. Doc. No. 03-347. Filed for public inspection February 28, 2003, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 53]

[L-00940096]

Filing Requirements Relating to Water and Wastewater Public Utilities

The Pennsylvania Public Utility Commission (Commission) on October 25, 2001, adopted a proposed rulemaking order to amend the regulations governing filing requirements for water and wastewater public utilities for general rate increase requests in excess of \$1 million. The contact persons are Judith Koch Carlson, Bureau of Fixed Utility Services (technical) (717) 783-5392 and Wayne T. Scott, Law Bureau (legal) (717) 783-6150.

Executive Summary

Section 53.53 (relating to information to be furnished with proposed general rate increase filings in excess of \$1 million) requires a utility that is requesting a general rate increase in excess of \$1 million to provide extensive information through the use of data requests in relation to the company's income, revenues, expenses, taxes, rate base, depreciation and rate of return. On October 24, 1994, the Commission issued an advance notice of proposed rulemaking to solicit comments from water and wastewater utility companies that will be the primary active participants in future rate cases of this nature for the purpose of providing input as to how these filing requirements may be modified to lessen the amount of information needed.

The proposed rulemaking significantly streamlines filing requirements. The proposed rulemaking also lessens the regulatory burden on all jurisdictional water and wastewater public utilities that request a rate increase in excess of \$1 million.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 19, 2003, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

Public Meeting held
October 25, 2001

Commissioners Present: Glen R. Thomas, Chairperson;
Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.;
and Terrance J. Fitzpatrick

*Proposed Rulemaking Reupdating and Revising Existing
Filing Requirements Relating to Water and Wastewater
Public Utilities; Doc. No. L-00940096*

Proposed Rulemaking Order

By the Commission:

On August 9, 1994, an order was entered at Docket No. L-00930088, entitled Policy Statement Resettlement Guidelines and Procedures for Major Rate Cases. In this order, the Commission adopted a final policy statement regarding the encouragement of negotiated settlements in major rate cases. The guidelines and procedures outlined in the policy statement are applicable to general rate increases in excess of \$1 million. The policy statement can be found in §§ 69.401—69.406 (relating to settlement guidelines and procedures for major rate cases—statement of policy).

The August 9, 1994, order required a revision of the existing filing requirement regulations in § 53.53. The Commission expressed its dissatisfaction with the filing requirements in their present form and ordered a general update to be commenced. The instant proposed rulemaking is a direct result of that Commission mandate.

Section 69.402(c)(1) (relating to the prefiling notice guidelines) necessitates that a utility that is requesting a general rate increase in excess of \$1 million provide responses to a standard set of industry specific data requests. The data requests in question were approved in an order on April 20, 1995, also at Docket No. L-00930088. Also, as part of the August 9, 1994, order, the Commission, on page 8, expressed the sentiment that the updated filing requirements would also incorporate the standard data requests, to the extent appropriate.

On October 24, 1994, the Commission issued an advanced notice of proposed rulemaking at the instant docket, published at 24 Pa.B. 5425 (October 29 1994), seeking comments from the public on this matter. Comments were received from the Office of Consumer Advocate, Office of Trial Staff and the National Association of Water Companies. Numerous technical conferences were

held as well as a number of meetings among active participants. As mentioned previously, the Commission expressed the desire to have the standard data requests integrated into the revised filing requirements. A considerable amount of time was devoted to achieving this end, and the instant rulemaking order proposes extensive amendments to § 53.53. The filing requirements proposed in this proposed rulemaking are the result of a consensus reached among representatives of the parties who will be the primary active participants in future water/wastewater utility general rate cases in excess of \$1 million.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201 et seq.) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; and section 745.5 of the Regulatory Review Act (71 P. S. § 745.5), we propose to amend our regulations as set forth in Annex A; *therefore,*

It Is Ordered that:

1. A proposed rulemaking is hereby instituted to amend the regulations governing the filing requirements for water and wastewater public utilities for general rate increase request in excess of \$1 million, as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality.

3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit a copy of this order and Annex A for review and comment by the designated standing committees of both houses of the General Assembly and for review and comments by IRRC.

5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. Within 30 days of this order's publication in the *Pennsylvania Bulletin* an original and 15 copies of any comments concerning this order shall be submitted to the Commission, Attention: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

7. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator (717) 772-4597.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-223. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS

INFORMATION FURNISHED WITH THE FILING OF RATE CHANGES

§ 53.53. Information to be furnished with proposed general rate increase filings in excess of \$1 million.

(a) When a public utility, other than a canal, turnpike, tunnel, bridge or wharf company, files a tariff or tariff

supplement seeking a general rate increase within the meaning of 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates), and the general rate increase exceeds \$1 million in gross annual revenues, in addition to the data required by other provisions of this chapter, the tariff or tariff supplement shall be accompanied by responses to the data requests contained in the following exhibits which apply to the utility types indicated.

(1) Exhibit A—Utilities except communications [and], electric [utilities], water and wastewater utilities.

* * * * *

(4) Exhibit D—Water and wastewater utilities.

* * * * *

Exhibit A

I. VALUATION

* * * * *

E. [WATER UTILITIES ONLY, IN ADDITION TO PROVIDING THE INFORMATION REQUESTED IN "A.":] (Reserved)

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of E, which appears at 52 Pa. Code page 53-25, serial page (213599).)

* * * * *

III. BALANCE SHEET AND OPERATING STATEMENT

* * * * *

C. [WATER UTILITIES ONLY, IN ADDITION TO PROVIDING THE INFORMATION REQUESTED IN "A.":] (Reserved)

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of C, which appears at 52 Pa. Code pages 53-39 to 53-45, serial pages (213613) to (213619).)

* * * * *

IV. RATE STRUCTURE

A. [WATER UTILITIES] (Reserved)

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of A, which appears at 52 Pa. Code pages 53-58 to 53-60, serial pages (213632) to (213634).)

* * * * *

Exhibit D

I. STATEMENT OF INCOME

A. WATER AND WASTEWATER UTILITIES

1. Provide comparative operating statements for the test year and the immediately preceding 12 months showing increases and decreases between the two periods. These statements should supply detailed explanation of the causes of the major variances between the test year and preceding year by detailed account number.

2. Prepare a Statement of Income for the various time frames of the rate proceeding including:

Col. 1 - Book recorded statement for the test year.

2 - Adjustments to book recorded statement to annualize and normalize under present rates.

3 - Income statement under present rates after adjustment in Col. 2.

4 - Adjustment to Col. 3 for revenue increase requested.

5 - Income statement under requested rates.

3. If a company has separate operating divisions, an income statement must be shown for each division, plus an income statement for the company as a whole.

4. Provide operating income claims under:

a. Present rates.

b. Pro forma present rates (annualized & normalized).

c. Proposed rates (annualized & normalized).

5. Provide rate of return on original cost under:

a. Present rates.

b. Pro forma present rates.

c. Proposed rates.

II. OPERATING REVENUES

1. Prepare a summary of operating revenues for the test year and the year preceding the test year, providing the following information:

a. For each classification of customers:

(i) Number of customers as of year-end.

(ii) Gallons sold.

(iii) Revenues.

b. Customers forfeited discounts and penalties and miscellaneous water revenues.

2. Prepare a summary of operating revenues for the test year, providing the following information:

a. For each classification of customers and for customers forfeited discounts and penalties and miscellaneous water/wastewater revenues:

(i) Revenues.

(ii) Annualizing and normalizing adjustments to arrive at adjusted operating revenues for ratemaking.

(iii) Proposed increase in operating revenues.

(iv) Percent increase in operating revenues.

(v) Operating revenues under proposed rates.

3. Provide a schedule of present and proposed tariff rates showing dollar change and percent of change by block. Provide increases to customers at various monthly uses showing billings at existing and proposed rates. Provide also an explanation of any change in block structure and the reason therefor. Provide a copy of the proposed tariff or tariff supplement.

4. Provide for the test year a detailed customer consumption analysis and the application of rates to support present and proposed rates by customer classification and/or tariff rate schedule.

5. Provide detailed computations of the determination of accrued revenues as of test year-end and year-end immediately preceding the test year, to-

gether with a detailed explanation of the procedures and methods used in developing accrued revenues.

6. Provide a detailed analysis of miscellaneous water revenues for the test year and the two years immediately preceding the test year. For the test year, provide a monthly breakdown and an explanation of significant monthly variances.

7. Provide a monthly summary of customers added and lost by customer classification for the test year and the current year-to-date.

8. Provide for the test year and the current year-to-date, the number of customers and monthly consumption for each classification of customers.

9. Provide by customer classification for the test year and for the two prior years the number of customers and consumption, and projected number of customers and consumption for two subsequent years.

10. Provide a breakdown of the number and size of private fire services according to the general water service class of customers.

a. Provide a listing of all public fire protection customers at test year-end and the pro forma billing of current rates for each customer.

11. Provide a detailed schedule of sales for resale revenues for the test year and two preceding years showing revenues and units sold by customer.

12. Provide for the test year and the two prior years consumption and billings for the ten (10) largest customers. Provide for the test year consumption priced at proposed rates.

13. Provide for the test year and the two prior years consumption and billings for the ten (10) largest sales for resale customers if such sales are not included in sales to the ten (10) largest customers requested in 53.53 IL.12 of Annex A.

III. OPERATING EXPENSE

1. Prepare a summary of operating expenses by operating expense account for the test year and the two years preceding the test year.

2. Prepare a summary of operating expenses for the test year providing annualizing and normalizing adjustments to arrive at adjusted operating expenses for ratemaking, including supporting data.

3. List extraordinary property losses as a separate item, not included in operating expenses or depreciation and amortization. Sufficient supporting data must be provided.

4. Supply detailed calculations of normalization of rate case expense, including supporting data for outside services rendered. Provide the items comprising the rate case expense claim (include the actual billings or invoices in support of each kind of rate case expense) and the items comprising the actual expenses of prior rate cases.

5. Submit detailed computation of adjustments to operating expenses for salary, wage and fringe benefit increases (union and non-union merit, progression, promotion and general) granted during the test year and six months subsequent to the test year. Supply data showing for the test year:

a. Actual payroll expense (regular and overtime separately) by categories of operating expenses, i.e., maintenance, operating transmission, distribution, other.

b. Date, percentage increase and annual amount of each general payroll increase during the test year.

c. Dates and annual amounts of merit increases or management salary adjustments.

d. Total annual payroll increases in the test year.

e. Proof that the actual payroll plus the increases equal the payroll expense claimed in the supporting data (by categories of expenses).

f. Detailed list of employee benefits and cost thereof for union and non-union personnel. Any specific benefits for executives and officers should also be included, and cost thereof.

g. Support the annualized pension cost figures.

(i) State whether these figures include any unfunded pension costs. Explain.

(ii) Provide latest actuarial study used for determining pension accrual rates.

h. Submit a schedule showing any deferred income and consultant fee to corporate officers or employees.

6. Supply an exhibit showing an analysis, by functional accounts, of the charges by affiliates (service corporations, etc.) for services rendered included in the operating expenses of the filing company for the test year and for the 12-month period ended prior to the test year:

a. Supply a copy of contracts, if applicable.

b. Explain the nature of the services provided.

c. Explain basis on which charges are made.

d. If charges are allocated, identify allocation factors used.

e. Supply the components and amounts comprising the expense in this account.

f. Provide details of initial source of charge and reason thereof.

7. Describe costs relative to leasing equipment, computer rentals, and office space, including terms and conditions of the lease. State method for calculating monthly or annual payments.

8. Submit detailed calculations (or best estimates) of the cost resulting from major storm damage.

9. Submit details of expenditures for advertising (national and institutional and local media). Provide a schedule of advertising expense by major media categories for the test year and the prior two comparable years with respect to:

a. Public health and safety.

b. Conservation of energy.

c. Explanation of billing practices, rates, etc.

d. Provision of factual and objective data programs in educational institutions.

e. Other advertising programs.

f. Total advertising expense.

10. Prepare a detailed schedule for the test year showing types of social and service organization memberships paid for by the company and the cost thereof.

11. Submit a schedule showing, by major components, the expenditures associated with outside services employed, regulatory commission expenses and miscellaneous general expenses, for the test year and prior two comparable years.

12. Submit details of information covering research and development expenditures, including major projects within the company and forecasted company programs.

13. Provide a detailed schedule of all charitable and civic contributions by recipient and amount for the test year.

14. Provide the two most recent actuarial studies for both pension expense and postretirement benefits other than pensions (OPEBs).

15. Identify the total pension expense under SFAS 87 for the test year and the portion charged to O&M. Include an analysis showing the contribution to the pension plan and the amount deferred or expensed for each of the past two years and the test year.

16. Provide an analysis of OPEBs showing the accrual amount under SFAS 106 and the pay-as-you-go expense.

17. Reconcile the historical and future test year SFAS No. 106 expense levels with the amount identified in the actuarial report.

18. Identify the actual or projected amounts contributed to SFAS No. 106 funds for the historic and future test years. Identify the actual or projected dates and amounts of the contributions.

19. Explain the funding options or plans which are being used for SFAS No. 106 costs. Identify the portion of costs which are eligible for tax preferred funding.

20. Is the company studying and/or anticipating any changes to its postretirement benefits offered to employees as a result of SFAS No. 106 or for other reasons? If yes, provide such study and/or explain the anticipated change.

21. State whether the test year expenses reflect any accruals for postemployment benefits under SFAS 112. If yes, provide complete details including supporting documentation, assumptions, and funding mechanisms.

22. Provide a copy of all incentive compensation and/or bonus plans and provide the level of related bonus payments included in the cost of service. Provide information for the preceding two years and any changes since the last rate case.

23. Provide the most recent insurance premiums for each type of insurance coverage (both employee benefit and those purchased for the company) reflected in the company's filing. If available, provide estimated premiums for the subsequent calendar year.

24. Provide the level of payments made to industry organizations included in the cost of service along with a description of each payee organization.

25. If the company has included any costs associated with canceled construction projects or obsolete inventory in requested rates, separately identify the items, provide the related amounts and explain the reason for the cancellation or obsolescence.

26. Explain how the company accounts for vacation pay for book and ratemaking purposes.

27. Indicate whether any employee positions have been eliminated since the commencement of the historic test year or are expected to be eliminated during the future test year.

28. Furnish the name of each supplier, gallonage and expense for water purchased as recorded in Water Purchased for Resale-Account 706 for test year and two preceding years.

IV. TAXES

1. Provide a copy of the latest PA corporate tax report and the latest PA corporate tax settlement.

2. Submit details of calculations for taxes, other than income, where a company is assessed taxes for doing business in another state, or on its property located in another state.

3. Submit a schedule showing for the last three years the income tax refunds, plus interest (net of taxes) received from the federal government due to prior years' claims.

4. Provide detailed computations showing the deferred income taxes derived by using accelerated tax depreciation applicable to post-1969 utility property that increases productive capacity, and ADR rates on property (separate between state and federal; also, rate used).

a. State whether tax depreciation is based on all rate base items claimed as of the end of the test year, and whether it is the annual tax depreciation at the end of the test year.

b. Reconcile any difference between the deferred tax balance, as shown as a reduction to measures of value (rate base), and the deferred tax balance as shown on the balance sheet.

5. Submit a schedule showing a breakdown of accumulated investment tax credits (3 percent, 4 percent, 7 percent, 10 percent and 11 percent), together with details of methods used to write-off the unamortized balances.

6. Submit a schedule showing the adjustments for taxable net income per books (including below-the-line items) and pro-forma under existing rates, together with an explanation of any difference between the adjustments. Indicate charitable donations and contributions in the tax calculation for ratemaking purposes.

7. Submit detailed calculations supporting taxable income before state and federal income taxes where the income tax is subject to allocation due to operations in another state, or due to operation of other taxable utility or non-utility business, or by operating divisions or areas.

8. Furnish a breakdown of major items comprising prepaid and deferred income tax charges and other deferred income tax credits and reserves by accounting areas.

9. Explain the reason for the use of cost of removal of any retired plant figures in the income tax calculations.

10. State whether all tax savings due to accelerated depreciation on property installed prior to 1970 have been passed through to income. (If not, explain.)

11. Show any income tax loss/gain carryovers from previous years that may affect test year income taxes or future year income taxes. Show loss/gain carryovers by years of origin and amounts remaining by years at the end of the test year.

12. Provide a detailed analysis of taxes accrued per books as of the test year date. Also supply the basis for the accrual and the amount of taxes accrued monthly.

13. Under Section 1552 of the Internal Revenue Code and Regulations at 1.1552-1 thereunder, if applicable, a parent company, in filing a consolidated income tax return for the group, must choose one of four options by which it must allocate total income tax liability of the group to the participating members to determine each member's tax liability to the federal government. (If this interrogatory is not applicable, so state).

a. State what option has been chosen by the group.

b. Provide, in summary form, the amount of tax liability that has been allocated to each of the participating members in the consolidated income tax return.

c. Provide a schedule, in summary form, of contributions, which were determined on the basis of separate tax return calculations, made by each of the participating members to the tax liability indicated in the consolidated group tax return. Provide total amounts of actual payments to the tax depository for the tax year, as computed on the basis of separate returns of members.

d. Provide annual income tax return for group, and if income tax return shows net operating loss, provide details of amount of net operating loss allocated to the income tax returns of each of the members of the consolidated group.

14. Provide a copy of the corporate federal tax returns and supporting schedules for the preceding three years and, if applicable, a copy of the calculation workpapers for the company's consolidated tax savings adjustment.

15. Provide a schedule of federal and Pennsylvania taxes, other than income taxes, calculated on the basis of test year per books, pro forma at present rates, and pro forma at proposed rates, to include the following categories:

- a. Social security.
- b. Unemployment.
- c. Capital stock.
- d. Public utility realty.
- e. PUC assessment.
- f. Other property.
- g. Any other appropriate categories.

16. Submit a schedule showing a breakdown of the deferred income taxes by state and federal per books, pro-forma, existing rates, and under proposed rates.

17. With respect to determination of income taxes, federal and state:

a. Show income tax results of the annualizing and normalizing adjustments to the test year record before any rate increase.

b. Show income taxes for the annualized and normalized test year.

c. Show income tax effect of the rate increase requested.

d. Show income taxes for the normalized and annualized test year after application of the full rate increase.

18. State amount of debt interest utilized for income tax calculations, and details of debt interest computations, under each of the following rate case bases:

- a. Actual test year.
- b. Annualized test year-end.
- c. Proposed test year-end.

V. RATE BASE

1. Provide a schedule showing the measures of value and the rates of return at the original cost in the current case. All claims made on this exhibit should be cross-referenced to appropriate exhibits.

2. If a claim is made for construction work in progress, include, in the form of an exhibit, the summary page from all work orders, amount expended at the end of the test year and anticipated in-service dates. Indicate if any of the construction work in progress will result in insurance recoveries, reimbursements, or retirements of existing facilities. Describe in exact detail the necessity of each project claimed if not detailed on the summary page from the work order. Include final completion dates and estimated total amounts to be spent on each project. (This exhibit should be updated at the conclusion of these proceedings.)

3. If a claim is made for non-revenue producing construction work in progress, include, in the form of an exhibit, the summary page from all work orders, amount expended at the end of the test year and anticipated in-service dates. Indicate if any of the construction work in progress will result in insurance recoveries, reimbursements, or retirements of existing facilities. Describe in exact detail the necessity of each project claimed if not detailed on the summary page from the work order. Include final completion data and estimated total amounts to be spent on each project. (These exhibits should be updated at the conclusion of these proceedings.)

4. If a claim is made for plant held for future use, supply the following:

- a. A brief description of the plant or land site and its original cost.
- b. Expected date of use for each item claimed.
- c. Explanation as to why it is necessary to acquire each item in advance of its date of use.
- d. Date when each item was acquired.

e. Date when each item was placed in the plant held for future use account.

5. If fuel stocks comprise part of the cash working capital claim, provide an exhibit showing the actual book balances (quantity and price) for the fuel inventories by type of fuel for the thirteen months prior to the end of the test year by location, station, etc. (Explain the method of determining claim if other than that described above.)

6. Explain in detail by statement or exhibit the appropriateness of claiming any additional items, not previously mentioned, in the measures of value.

7. Provide schedules and data in support of the following working capital items:

- a. Prepayments—list and identify all items.
- b. Federal income tax accrued or prepaid.
- c. Pa. state income tax accrued or prepaid.
- d. Pa. capital stock tax accrued or prepaid.
- e. Pa. public utility realty tax accrued or prepaid.
- f. Payroll taxes accrued or prepaid.
- g. Any adjustments related to the above items for ratemaking purposes.

8. Supply an exhibit supporting the claim for cash working capital requirement based on the lead-lag method.

a. Pro forma expenses and revenues are to be used in lieu of book data for computing lead-lag days.

9. Indicate if amortized expenses have been removed from the lead-lag study. If so, please provide documentation showing such removal. If not, provide a list of such amortization expenses included.

10. Identify the funds availability arrangements or terms which the company has with its banks with respect to deposits of customer checks. For example, does the company have same day or next day access to funds deposited?

11. In reference to materials and supplies:

a. What method of inventory valuation was used to develop the claim for materials and supplies?

b. Does the utility use a material and supply model to calculate needed material and supply levels?

c. If so, provide the model. Supply an illustrative example of how the monthly balances are derived.

d. Provide the actual monthly value for the inventory of materials and supplies for the past 12 months. Supply as of the end of the test year, a 13-month average, by month, for the material and supply account.

e. Provide the monthly level of materials and supplies for three years prior to the conclusion of the historic test year.

12. For each non-blanket or projected plant addition to cost the lesser of \$100,000 or 0.5% of current rate base, included in the future test year, please provide:

- a. Description of the project.
- b. Original budgeted cost (broken down by AFUDC and non-AFUDC components).

c. Current budgeted cost (broken down by AFUDC and non-AFUDC components).

d. Reason for change in budgeted cost.

e. Original estimated date of completion and in service.

f. Current estimated date of completion and in service.

g. Reason for change in completion date.

h. Anticipated retirement related to the plant addition.

i. Starting date of project.

j. Amount expended to date.

k. Percent of project currently complete.

l. The depreciation rate applicable.

m. Identify which projects are due to a PA-DEP or EPA requirement.

13. Explain how the future test year plant balances were projected and provide supporting workpapers and documentation.

14. Are all of the assets used in the plant-in-service claim used exclusively by the utility? If not, provide the estimated percentage that each shared asset is used by other entities.

15. Is all plant included in rate base currently being used in providing water service? If not, provide a schedule which presents those plant items which are not, and indicate the corresponding amounts and account numbers. Further, provide a detailed narrative explaining the reason why such plant is not being used and the anticipated future disposition of the plant.

16. Provide all workpapers and supporting documentation showing the derivation of the projected balances of contributions in aid of construction, customer advances for construction and company service line and customer deposits for the future test year.

VI. DEPRECIATION

1. Provide a description of the depreciation methods utilized in calculating annual depreciation amounts and depreciation reserves, together with a discussion of the significant factors which were considered in arriving at estimates of service life and dispersion by account. Supply a comprehensive statement of any changes made in method of depreciation. Provide dates of all field inspections and facilities visited.

2. Set forth, in exhibit form, charts depicting the original and estimated survivor curves and a tabular presentation of the original life table plotted on the chart for each account where the retirement rate method of analysis is utilized.

3. Provide the surviving original cost at test year end by vintage by account and include applicable depreciation reserves and accruals. These calculations should be provided for plant in service as well as other categories of plant, including, but not limited to, contributions in aid of construction and customers' advances for construction.

4. Provide a comparison of respondent's calculated depreciation reserve v. book reserve by account at the end of the test year.

5. Supply a schedule by account and depreciable group showing the survivor curve and annual accrual rate estimated to be appropriate:

- a. For the purposes of this filing.
- b. For the purposes of the most recent rate increase filing prior to the current proceedings.

6. Provide an exhibit showing gross salvage, cost of removal, and net salvage for the five most recent calendar or fiscal years by account.

VII. RATE OF RETURN

1. Provide capitalization and capitalization ratios for the last 5-year period and projected through the next two years (with short-term debt and without short-term debt for the company, parent and system (consolidated)).

a. Provide year-end interest coverages before and after taxes for the last three years and at the latest date (indenture and SEC bases) for the company, parent and system (consolidated).

b. Provide year-end preferred stock dividend coverages for last three years and at latest date (charter and SEC bases).

2. Provide latest prospectus (company and parent).

3. Supply projected capital requirements and sources of company, parent and system (consolidated) for the test year and each of three comparable future years.

4. Provide a schedule of debt and preferred stock of company, parent and system (consolidated) as of test year-end and latest date, detailing for each issue (if applicable):

- a. Date of issue.
- b. Date of maturity.
- c. Amount issued.
- d. Amount outstanding.
- e. Amount retired.
- f. Amount required.
- g. Gain on reacquisition.
- h. Coupon rate.
- i. Discount or premium at issuance.
- j. Issuance expenses.
- k. Net proceeds.
- l. Sinking fund requirements.
- m. Effective interest rate.
- n. Dividend rate.
- o. Effective cost rate.
- p. Total average weighted effective cost rate.

5. Supply financial data of company and/or parent for last five years:

- a. Earnings-price ratio (average).
- b. Earnings-book value ratio (per share basis) (avg. book value).
- c. Dividend yield (average).
- d. Earnings per share (dollar).
- e. Dividends per share (dollars).

f. Average book value per share yearly.

g. Average yearly market price per share (monthly high-low basis).

h. Pre-tax funded debt interest coverage.

i. Post-tax funded debt interest coverage.

j. Market price-book value ratio.

6. Provide AFUDC charged by company at test year-end and latest date, explain method by which rate was calculated and provide workpaper showing derivation of the company's current AFUDC rate.

7. Set forth provisions of company's and parent's charter and indentures (if applicable) which describe coverage requirements, limits on proportions of types of capital outstanding, and restrictions on dividend payouts.

8. Attach copies of the summaries of the company's projected budgets for the next two years (revenues, expenses and capital).

9. Describe long-term debt reacquisitions by company and parent as follows:

- a. Reacquisitions by issue by year.
- b. Total gain on reacquisitions by issue by year.
- c. Accounting of gain for income tax and book purposes.

10. Provide the following information concerning compensating bank balance requirements for actual test year:

- a. Name of each bank.
- b. Address of each bank.
- c. Type of accounts with each bank (checking, savings, escrow, other services, etc.).
- d. Average daily balance in each account.
- e. Amount and percentage requirements for compensating bank balances at each bank.
- f. Average daily compensating bank balance at each bank.
- g. Documents from each bank explaining compensating bank balance requirements.
- h. Interest earned on each type of account.

11. Provide the following information concerning bank notes payable for actual test year:

- a. Line of credit at each bank.
- b. Average daily balances of notes payable to each bank, by name of bank.
- c. Interest rate charged on each bank note (prime rate, formula).
- d. Purpose of each bank note (e.g., construction, fuel storage, working capital, debt retirement).
- e. Prospective future need for this type of financing.

12. Submit details on company or parent common stock offerings (past five years to present) as follows:

- a. Date of prospectus.
- b. Date of offering.
- c. Record date.

- d. Offering period—dates and number of days.
- e. Amount and number of shares of offering.
- f. Offering ratio (if rights offering).
- g. Percent subscribed.
- h. Offering price.
- i. Gross proceeds per share.
- j. Expenses per share.
- k. Net proceeds per share (i—j).
- l. Market price per share.
 - (1) At record date.
 - (2) At offering date.
 - (3) One month after close of offering.
- m. Average market price during offering.
 - (1) Price per share.
 - (2) Rights per share—average value of rights.
- n. Latest reported earnings per share at time of offering.
- o. Latest reported dividends at time of offering.

13. Attach chart explaining company's corporate relationship to its affiliates (system structure).

14. If the utility plans to make a formal claim for a specified allowable rate of return, provide the following data in statement or exhibit form:

- a. Claimed capitalization and capitalization ratios with supporting data.
- b. Claimed cost of long-term debt with supporting data.
- c. Claimed cost of short-term debt with supporting data.
- d. Claimed cost of total debt with supporting data.
- e. Claimed cost of preferred stock with supporting data.
- f. Claimed cost of common equity with supporting data.

15. Supply copies of the following documents for the company and, if applicable, its parent:

- a. Most recent annual report to shareholders including any statistical supplements.
- b. Most recent SEC form 10K.
- c. All SEC form 10Q reports issued within last year.

16. Supply copies of the company's balance sheets for each month/quarter for the last two years.

17. Provide the bond rating history for the company and, if applicable, its parent from the major credit rating agencies for the last five years.

18. Provide copies of all bond rating reports relating to the company and, if applicable, its parent for the past two years.

19. Supply copies of all presentations by the company's and, if applicable, its parent's management to securities analysts during the past two years. This would include presentations of financial projections.

20. Provide a listing of all securities issuances for the company and, if applicable, its parent projected for the next two years. The response should identify for each projected issuance the date, dollar amount, type of security, and effective cost rate.

21. Identify any plan by the company to refinance high cost long-term debt or preferred stock.

22. Provide copies of all securities analysts reports relating to the company and/or its parent issued within the past two years.

23. If applicable, supply a listing of all common equity infusions from the parent to the company over the past five years. In each case, identify date and dollar amount.

24. If applicable, identify the company's common dividend payments to its parent for each of the last five years.

25. Provide the latest year-by-year financial projections for the company for the next five years. Also, please indicate the date these projections were prepared; whether approved by management; and whether the projections have been submitted to bond rating agencies. The information will be treated in a confidential manner, if requested.

26. Provide the company's 5-year construction budget.

27. Identify the company's and, if applicable, its parent's capital structure targets (percentages of capital types). Provide the complete basis for the capital structure targets.

28. For each month, of the most recent 24 months, supply the company's

- a. Short-term debt balance.
- b. Short-term debt interest rate.
- c. Balance of construction work in progress.

d. Balance of construction work in progress which is eligible for AFUDC accrual:

29. Fully identify all debt (other than instruments traded in public markets) owed to all shareholders, corporate officers, or members of the board of directors, its affiliates, parent company, or subsidiaries.

30. Provide a summary statement of all stock dividends, splits, or par value changes during the 2-year calendar period preceding the rate case filing.

31. If a claim of the filing utility is based on utilization of the capital structure or capital costs of the parent company and system (consolidated), the reasons for this claim must be fully stated and supported.

32. To the extent not provided elsewhere, supply financial data of company and/or parent for the last five years.

- a. Times interest earned ratio—pre and post tax basis.
- b. Preferred stock dividend coverage ratio—post tax basis.
- c. Times fixed charges earned ratio—pre tax basis.
- d. Dividend payout ratio.

e. AFUDC as a percent of earnings available for common equity.

f. Construction work in progress as a percent of net utility plant.

g. Effective income tax rate.

h. Internal cash generations as a percent of total capital requirements.

VIII. RATE STRUCTURE AND COST OF SERVICE

1. Provide a complete (fully allocated) cost of service study if an interval of approximately three years has passed between a previous cost of service study and the historic test year date of the current filing. The cost of service study shall provide the necessary data to determine if the water rate structure is fair and equitable to all classifications of water users (including public and private fire protection customers) and reflects, as nearly as possible, the cost of providing the service. The study shall correspond to the test year proposed revenue requirements (future test year only, if used). Summaries of conclusions and all back-up calculations shall be made part of the submission of the cost of service study, and shall include the following:

a. A description of the allocation methods used. A comparison of the allocated cost of service by class with the present and proposed revenues. A cost of service schedule showing the rate of return produced by present and proposed rates by class of service.

b. Indicate if the method used for establishing the allocation factors in the cost of service study deviates from the previous study submitted in the last rate case. If yes, indicate which allocation factors were changed and discuss the reason for the changes.

c. Supply the average day, the maximum day and the maximum hour deliveries to the system adjusted for storage for the test year and two prior years. Also provide workpapers, analyses, comparative data or other documentation supporting the estimated maximum day and peak hour demands by customer class reflected in the company's cost of service study.

d. Explain thoroughly the methodology employed if the company distinguishes between transmission and distribution mains in its allocation of costs.

e. Provide a detailed explanation of how storage is utilized to meet base, maximum day and maximum hour demands.

f. Provide workpapers, calculations and supporting documentation which develop the equivalent meters and equivalent service line weights reflected in the company's cost of service study.

g. Provide all workpapers and supporting documentation for the fire flow requirement and duration utilized in the cost of service study.

h. Provide a breakdown of the number and size of private fire services according to the general water service class of customer.

i. Provide a calculation of the company's base cost of water per unit of consumption.

j. Provide a detailed cost analysis that supports the company's customer charges, by meter size, showing all direct and indirect costs included.

2. Provide a listing of negotiated special rate contracts which includes a comparison of revenues under special rate contracts and under tariff rates. Provide the cost of service treatment of any deficiency in revenues resulting from the negotiated special rate contracts.

IX. QUALITY OF SERVICE

1. Indicate whether the company is in violation of any provision of the Pennsylvania Safe Drinking Water Act (SDWA) or any rule, regulation or order, or any condition of any permit, variance or exemption granted by the Department of Environmental Protection (DEP), or its predecessor.

a. Provide information indicating whether the company is in compliance with SDWA provisions at 25 Pa. Code, § 109.401 regarding general public notification requirements:

(i) Provide a copy of each public notification given in accordance with this section, since the last rate proceeding.

(ii) Provide a detailed explanation of all actions taken to remedy an acute violation, and/or to comply with the requirements prescribed by a variance or exemption.

(iii) State whether any fines or penalties were assessed by DEP, and indicate the amounts paid by the company.

b. Provide the most recent copies of all annual consumer confidence reports issued pursuant to SDWA Amendments of 1996 since the last rate proceeding.

(i) Provide any annual consumer confidence reports which reflect violations of state and federal safe drinking water requirements.

(ii) Explain how these violations were resolved.

2. Indicate whether the company is in compliance with 52 Pa. Code, § 65.5(a) regarding normal operating pressure standards, and with 52 Pa. Code, § 65.6(d) regarding pressure surveys at regular intervals.

a. Provide details on any major water pressure problems which had occurred since the last rate proceeding in any part of the water distribution system.

b. Describe any action taken on a temporary basis, and the long term solutions developed to address any major water pressure problems.

3. Provide support to demonstrate that water service is being furnished on a continuous basis by supplying a summary of the company's records of each service interruption greater than 24 hours since the last rate proceeding.

4. Provide a discussion of the company's policy, or provide a copy of the policy if in written form, on tracking and responding to customer complaints.

a. Provide a summary report demonstrating the company's compliance with 52 Pa. Code, § 65.3 regarding the full and prompt investigation of service or facility complaints and the record keeping requirements of such complaints.

5. Indicate whether the company is in compliance with 52 Pa. Code, § 65.4(b) regarding complete and current mapping of the entire distribution system.

6. Provide a summary report demonstrating the company's efforts in water conservation, since the last rate proceeding, pursuant to 52 Pa. Code, § 65.20.

7. Provide a discussion of the company's policy regarding meter requirements, replacements and testing. State if the company's procedures are in compliance with 52 Pa. Code, § 65.8(b).

a. Provide meter test records as required in 52 Pa. Code, § 65.8(c) for the 50 meters most recently removed from service.

b. Provide a discussion of the company's policy and history of compliance with 52 Pa. Code, § 65.9 regarding adjustment of bills for meter error within the last year.

X. BALANCE SHEET

1. Provide a comparative balance sheet for the test year-end and the preceding year-end.

2. Provide a detail of other physical property, investments in affiliated companies and other investments.

3. Provide the amounts and purpose of special cash accounts as of the test-year end.

4. Describe the nature and amounts of notes receivable, accounts receivable from associated companies, and any other significant receivables, other than customers' accounts.

5. Provide the amount of accumulated reserve for uncollectible accounts, method and rate of accrual, amounts accrued and amounts written-off in each of the last three years.

6. Provide a list of prepayments and give an explanation of special prepayments.

7. Explain in detail any other significant (in amount) current assets listed on balance sheet.

8. Explain in detail, including the amount and purpose, the deferred asset accounts that currently operate to effect or will at a later date affect the operating account supplying:

a. Origin of these accounts.

b. Probable changes to this account in the near future.

c. Amortization of these accounts currently charged to operations or to be charged in the near future.

9. Explain the nature of accounts payable to associated companies, and note amounts of significant items.

10. Provide details of other deferred credits as to their origin and disposition policy (e.g., amortization).

11. Provide details of any significant reserves, other than depreciation and bad debt, appearing on balance sheet.

12. Provide an analysis of unappropriated retained earnings for the test year and two preceding years.

13. Describe the purpose of any advances made by the company to its parent corporation and describe all terms and conditions associated with such advances, including an estimate of future advances or repayments that are expected to occur.

XI. OTHER DATA

1. Provide the company's monthly balance sheets and income statements for each month of the historic and future test year.

2. Supply a copy of internal and independent audit reports of the test year and prior calendar year, noting any exceptions and recommendations and disposition thereof.

3. Provide all monthly and/or quarterly budget variance reports to management and/or the board of directors submitted during the past year. Please provide the most recent detailed budget variance report which the company compiled, and update as additional reports are issued.

4. Provide a copy of the company's most recent operating and capital budgets.

5. Provide a schedule that shows the percentage of unaccounted for water for the test year and two prior years. Describe how this amount was determined and explain any steps taken to reduce unaccounted for water.

6. Provide a corporate history (include the dates of original incorporation, subsequent mergers and/or acquisitions). Indicate all counties and cities and other governmental subdivisions to which service is provided (including service areas outside the state), and the total population in the area served.

[Pa.B. Doc. No. 03-348. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9]

Firm Practice

The State Architects Licensure Board (Board) proposes to amend §§ 9.161—9.164 by adding the requirements for registration as a limited liability company or limited liability partnership to read as set forth in Annex A.

A. *Effective Date*

The proposed amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The proposed amendments are authorized under sections 6(a) and 13(j) of the Architects Licensure Law (act) (63 P. S. §§ 34.6(a) and 34.13(j)).

C. *Background and Purpose*

Prior to 1998, section 13 of the act, regarding firm practice, listed the following entities permitted to engage in the practice of architecture: sole proprietorships, partnerships, professional associations, professional corporations and business corporations. In 1998, section 13 of the

act was amended to include limited liability companies and limited liability partnerships as acceptable entities. The Board's regulations have not been updated to reflect the changes in the act relating to firm practice. Hence, this proposed rulemaking.

D. *Description of the Proposed*

The Board proposes to amend § 9.161 (relating to compliance with applicable statutes) by adding limited liability companies and limited liability partnerships as entities permitted to engage in the practice of architecture and by requiring compliance with 15 Pa.C.S. Chapters 82 and 89 (relating to limited liability partnerships; and limited liability companies).

The amendment to § 9.162(2) (relating to firm practice) would clarify that its requirements apply to both general partnerships and limited liability partnerships. Section 9.162(5) adds the requirements for registering as a limited liability company, by mirroring the requirements set forth in the act and by adding the additional requirement that at least one member or manager of the company is be a licensee of the Board.

Section 9.163 (relating to prior approval by the Board) requires that the applicant seeking registration for an entity permitted to practice architecture in this Commonwealth shall complete a formal application provided by the Board.

Section 9.164 (relating to exception for two owners) adds limited liability companies and limited liability partnerships to the list of entities which may be wholly owned by only two persons.

E. *Fiscal Impact and Paperwork Requirements*

The proposed amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed amendments should not necessitate legal, accounting, reporting or other paperwork requirements.

F. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 27, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, the SCP/PLC and the HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to final publication of the rulemaking.

I. *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed

rulemaking to Dorna Thorpe, State Architects Licensure Board, 116 Pine Street, P.O. Box 2649, Harrisburg, PA 17105-2649 dothorpe@state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ANN SHEPARD HOUSTON,
President

Fiscal Note: 16A-417. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 9. STATE ARCHITECTS LICENSURE BOARD

PROFESSIONAL AND CORPORATE PRACTICE

§ 9.161. Compliance with applicable statutes.

An architect or group of architects may elect to practice architecture professionally as a sole proprietorship, a partnership, a professional association, a professional corporation, **a limited liability company, a limited liability partnership** or a business corporation. A practice so elected shall be formed and conducted under the act and this chapter. In addition, the practice shall comply as follows:

* * * * *

(6) **In the case of a limited liability company, with 15 Pa.C.S. Chapter 89 (relating to limited liability companies).**

(7) **In the case of a limited liability partnership, with 15 Pa.C.S. Chapter 82 (relating to limited liability partnerships).**

(8) * * *

§ 9.162. Firm practice.

The practice of architecture may be conducted in one of the following business forms:

* * * * *

(2) A partnership (**general or limited liability**) or professional association, when the following exist:

* * * * *

(5) **A limited liability company, when the following exist:**

(i) **At least two-thirds of the members if managed by members or at least two-thirds of the managers if managed by managers are licensed under the laws of any state to practice architecture, engineering or landscape architecture.**

(ii) **At least one-third of the members if managed by members or at least one-third of the managers if managed by managers are licensed under the laws of any state to practice architecture.**

(iii) **At least one member or manager is a licensee of the Board.**

(iv) **At least two-thirds of all classes of voting membership at any one time shall be owned by an individual licensed under the laws of any state to practice architecture, engineering or landscape architecture.**

(v) **At least one-third of all classes of voting membership at any one time shall be owned by an individual licensed under the laws of any state to practice architecture.**

§ 9.163. Prior approval by the Board.

The practice of architecture may not be conducted in one of the business forms specified [at] in § 9.162 (relating to firm practice) without first receiving the written approval of the Board. Written approval shall be sought by [filing] submitting a completed application on forms provided by the Board along with the following documents [with the Board]:

* * * * *

§ 9.164. Exception for two owners.

Section 9.162 (relating to firm practice) will not be construed to prevent the practice of architecture in a business form which is wholly owned by only two persons. The partnership, professional association, professional corporation, **limited liability company, limited liability partnership** or business corporation shall have at least one owner who is a licensee of the Board, and who owns at least 50% of the business.

[Pa.B. Doc. No. 03-349. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Continuing Education

The State Board of Optometry (Board) proposes to amend §§ 23.82, 23.83 and 23.87 (relating to continuing education hour requirements; continuing education subject matter; and reporting of continuing education credit hours) to read as set forth in Annex A. The proposed amendments would update the Board's continuing education regulations and conform them to prior regulatory amendments.

Effective Date

These proposed amendments would be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin* and would apply to continuing education credits earned during the 2002—2004 biennial renewal period.

Statutory Authority

Section 3(b)(12) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(b)(12)) authorizes the Board to approve continuing education. Section 3(b)(14) of the act authorizes the Board to "promulgate all rules and regulations necessary to carry out the purposes of this act."

Background and Need for the Amendments

The Board recently deleted § 23.201 and amended § 23.202 (relating to the application procedure for certification in pharmaceutical agents for therapeutic purposes) by final-form rulemaking published at 32 Pa.B. 2886 (June 15, 2002). The Board's continuing education regulations refer to §§ 23.201 and 23.202, and these references must be updated to conform with the prior regulatory amendments. In addition, the Board's proposed rule-

making to its continuing education regulations will clarify the subject matter acceptable to the Board for continuing education in pharmaceutical agents for therapeutic purposes. Finally, the proposed rulemaking clarifies a licensee's duties in reporting continuing education courses to the Board. The proposed rulemaking conforms the Board's continuing education regulations to the statute and prior regulatory amendments and thereby eliminates confusion regarding the acceptable subject matter for continuing education courses related to pharmaceutical agents for therapeutic purposes.

Description of Proposed Amendments

§ 23.82. Continuing education hour requirements.

The Board proposes to amend § 23.82(a) by deleting the references to the Board's regulations in §§ 23.201 and 23.202 and replacing them with references to section 4.1(a)(2) of the act (63 P. S. § 244.4a(a)(2)). This proposed amendment conforms the regulations to the Board's June 15, 2002, amendments of §§ 23.201 and 23.202, which deleted § 23.201 and amended § 23.202.

The Board proposes to amend § 23.82(b) to reflect the right to a hearing before discipline is imposed as provided in 2 Pa.C.S. § 504 (relating to hearing and record) and section 7(e) of the Optometric Practice and Licensure Act (63 P. S. § 244.7(e)). The Board may not unilaterally place a license on "inactive status" for failure to complete mandatory continuing education. The failure to complete mandatory continuing education is a violation of the act and regulations of the Board and the notice and hearing procedures of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and the act must be followed before the Board may discipline a licensee. The Board proposes to amend the regulation to provide that the Board may under notice and opportunity for a hearing, impose discipline on a licensee for failing to complete mandatory continuing education in accordance with section 7(3) of the act (63 P. S. § 244.7(c)).

§ 23.83. Continuing education subject matter.

The Board proposes to amend this section to reflect the changes made in the 1996 amendments to the act, in section 5(b) of the act (63 P. S. § 244.5(b)), which require optometrists who are certified to administer and prescribe pharmaceutical agents for therapeutic purposes (optometrists holding therapeutic certification) to complete at least 6 hours in the administration and prescription of pharmaceutical agents for therapeutic purposes. The proposed amendment notifies optometrists that these courses shall provide instruction regarding the treatment and management of ocular or oculo-systemic disease. The proposed amendment also notifies optometrists that Board-approved courses of therapeutic content will be designated with a course number with the suffix "T." In addition, the proposed amendment instructs course providers that the Board will notify the provider of approval of a course. Finally, the proposed amendment requests that preapproved course providers indicate on the certificate of attendance that the course is a therapeutic course.

§ 23.87. Reporting of continuing education hours.

The Board proposes to amend § 23.87 to conform the regulation to the current statutory requirement for biennial continuing education, 30 hours, and to note that providers with therapeutic certification shall include at least 6 hours in therapeutic courses. In addition, the Board proposes to amend the requirements for documentation that shall be submitted, upon request, to verify attendance at mandatory continuing education. The proposed amendment provides that optometrists shall in-

clude the course approval number to the Board when submitting documentation of continuing education compliance. The Board provides this number to the course provider. The course provider generally provides the course number on the certificate of attendance. If the course provider does not provide the course number on the certificate of attendance, the proposed amendment places the burden of obtaining the course number from the provider on the optometrist.

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions. The proposed amendments should not create additional paperwork for the Board or the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, the SCP/PLC and the HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Deborah Smith, Board Administrator, State Board of Optometry, P. O. Box 2649, Harrisburg, PA, 17105, www.dos.state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,
Chairperson

Fiscal Note: 16A-529. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY CONTINUING EDUCATION

§ 23.82. Continuing education hour requirements.

(a) An applicant for biennial license renewal or reactivation of license is required to complete, during the 2

years preceding renewal or reactivation, a minimum of 30 hours of continuing education. For licensees certified in accordance with section 4.1 of the act (63 P. S. § 244.4a) **[and §§ 23.201 and 23.202 (relating to qualifications for certification; and application procedure)]**, at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes. Completion of a **Board-approved** course described in **[§ 23.201(b)(1) (Reserved)]** **section 4.1(a)(2) of the act (63 P. S. § 244.4a(a)(2))** shall satisfy the continuing education requirement for the biennial renewal period in which it is completed.

(b) Persons failing to meet the continuing education requirements for any biennial renewal period will **[have their licenses placed in an inactive status and will be prohibited from the practice of optometry until such time as educational criteria are met, license is renewed, and any fees and penalties are properly paid]** be disciplined in accordance with section 7(e) of the act (63 P. S. § 244.7(e)).

(c) The Board may waive the requirements of continuing education in cases of certified illness or undue hardship. It **[shall be]** is the duty of each licensee seeking waiver to notify the Board in writing and request **[such]** the waiver **[, which]** prior to the end of the biennial renewal period for which the waiver is sought. The waiver will be granted, denied **[,]** or granted in part.

§ 23.83. Continuing education subject matter.

(a) Acceptable courses of study are limited to those pertaining to the use of means or methods for examination, diagnosis **[,]** and treatment of conditions of the human visual system and may include examination for and adapting and fitting of all types of lenses. The Board will not accept courses of study which do not relate to the actual practice of optometry such as studies in office management and financial procedures.

(b) **Courses that will meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes in accordance with section 4.1 of the act (63 P. S. § 244.4a) shall concern the treatment and management of ocular or oculo-systemic disease. Course providers will receive notification of approval from the Board. Courses approved to meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes will be given a course number with the suffix "T." Approval as a therapeutic course is subject to reevaluation by the Board. When courses in the prescription and administration of pharmaceutical agents for therapeutic purposes are provided by preapproved providers who do not receive a specific course number from the Board, course sponsors must indicate on the certificate of attendance that the course is offered to meet the requirements for certification.**

§ 23.87. Reporting of continuing education credit hours.

Applicants for a license or license renewal shall provide, at a time prescribed and on forms approved by the Board, a signed statement certifying that **[continuing education requirements have been met and]** they have met the continuing education requirements in

section 5(b) of the act (63 P. S. § 244.5(b)) by providing information [to document their certification,] which [information] shall include [but not be limited to] the following:

* * * * *

(3) Title of course, **including the course number assigned by the Board, if applicable**, and description of content. **For those courses which are approved to meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes, the licensee claiming credit for the course shall provide the Board with the course number.**

* * * * *

[Pa.B. Doc. No. 03-350. Filed for public inspection February 28, 2003, 9:00 a.m.]

[49 PA. CODE CH. 23] General Revisions

The State Board of Optometry (Board) proposes to amend §§ 23.1, 23.33—23.35, 23.42, 23.64 and 23.71 and to add § 23.72 to read as set forth in Annex A. The proposed rulemaking would generally update the Board's regulations to reflect current practices in the profession and to simplify the formation of professional corporations.

Effective Date

The proposed rulemaking would be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3(a)(2.1) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(a)(2.1)) added by the act of October 30, 1996 (P. L. 721, No. 130) (Act 130) provides that the Board shall have the duty "[t]o determine, in accordance with optometric education, training, professional competence and skill, the means and methods for examination, diagnosis and treatment of conditions of the visual system." Section 3(a)(3) of the act requires the Board "[t]o record all licenses in its office." Section 3(b)(9) of the act authorizes the Board "[t]o establish and administer a records system which records shall be open to public inspection during the regular business hours of the Board." Finally, section 3(b)(14) of the act authorizes the Board "[t]o promulgate all rules and regulations necessary to carry out the purposes of this act."

Background and Need for the Proposed Amendments

The Board's current regulations were promulgated prior to the amendments made by Act 130 and do not address the means and methods for the examination, diagnosis and treatment of conditions of the visual system. Act 130 placed additional duties on the Board. In addition, the Board routinely receives numerous requests for information regarding whether optometrists are permitted to perform specific procedures. Act 130 defines the practice of optometry very broadly. Act 130 specifies that the Board has the duty to address the more specific means and methods that optometrists may employ. This proposed rulemaking addresses both public inquiry and the amendments made by Act 130.

The Board's current regulations are outdated in that they do not set minimum requirements that optometrists shall follow in writing prescriptions and do not require optometrists to record the pharmaceutical agents used in a patient's medical record (optometrists were granted use of limited pharmaceutical agents by Act 130). In addition, the Board's regulations do not reflect the Board's current recordkeeping system. These proposed amendments are necessary to bring the Board's regulations into compliance with the amendments made in Act 130.

Following numerous meetings of the Board's regulations committee and consideration by the entire Board, an exposure draft was sent to the Pennsylvania Optometric Association (Association), the Pennsylvania College of Optometry (College) and the Pennsylvania Academy of Ophthalmology (Academy). Following this solicitation of input from stakeholders, the Board placed notices of a public hearing in major newspapers of this Commonwealth inviting the general public to a public hearing on July 12, 2001. The Association, College and Academy sent representatives to the public hearing. No members of the general public attended the meeting. After considering the input received, the Board now proposes the amendments as set forth in Annex A.

Description of the Proposed Amendments

§ 23.1 (relating to definitions)

In accordance with the mandate of Act 130, the Board proposes to amend § 23.1 to define "means and methods for the examination, diagnosis and treatment of conditions of the visual system." In formulating the provisions of the proposal, the Board considered extensive comments from the College, Academy and Association at its public hearing held on July 12, 2001. The Board's proposal includes diagnostic and treatment procedures that have been performed by optometrists for up to 25 years as well as newer technologies that have only become a standard part of optometric practice in the past few years.

The proposed amendment provides that optometrists may employ the following diagnostic techniques: the use of any computerized or automatic refracting device, visual field testing, ophthalmoscopy, anterior and posterior segment photography, provocative tests, electrodiagnostic tests, the use of lasers for diagnostic purposes, ultrasound examination of the eye and orbit and diagnostic tests to determine the patency of the lacrimal system. In addition, the proposed amendments provide that optometrists may order radiographs, computer assisted tomography scans, magnetic resonance imaging scans and laboratory work. Finally, the proposed amendments provide that optometrists may order, interpret and report on angiographic studies. The proposed amendments also address means and methods of treatment. The amendments provide that optometrists may employ vision therapy or orthoptics, low vision rehabilitation, epilation of lashes and may treat the lacrimal system including using punctal plugs. The specific procedures are authorized by Act 130 and are consistent with the practice of optometry in all states surrounding this Commonwealth.

§ 23.33 (relating to practice)

The Board proposes to amend § 23.33 to conform to current practice in the field of optometry. Subsection (a) of the current regulation restricts an optometrist to practice in a room used exclusively for the practice of optometry. The Board proposes to amend subsection (a) to clarify that this restriction applies only when the optometrist is practicing in his own office. The reality of today's

practice is that optometrists practice in health care facilities as well as their offices and cannot, therefore, always practice in a room used exclusively for the practice of optometry.

The Board also proposes to amend subsection (b) to further define the practice of an optometrist in a licensed health care facility. The proposed amendment merely reflects the current state of practice of the profession, defining "licensed health care facility" to include "in-patient or out-patient hospitals and emergency rooms, nursing homes and long term care facilities, or any facility with the need for optometric services."

Finally, the Board proposes to amend § 23.33 by adding a subsection (e) to permit optometrists to provide visual screenings at any location, public or private, within this Commonwealth. Optometrists are frequently asked to perform simple visual screenings, which do not require the facilities of the optometric office or health care facility, at various events and locations. The amendment would permit optometrists to perform these screenings. The provision of vision screening services is a great benefit to the citizens of this Commonwealth.

§§ 23.34 and 23.35 (relating to professional corporations; and fictitious names)

The Board proposes to amend §§ 23.34 and 23.35 to reflect current optometric practice and to reflect the current recordkeeping procedures of the Board administrative office and the Department of State Corporation Bureau (Bureau). The Board proposes to amend § 23.34(a) to permit optometrists to incorporate with other health care professionals if authorized by the Commonwealth's laws pertaining to incorporation. The Board proposes to amend §§ 23.34 and 23.35 by deleting the requirements that optometrists file articles of incorporation or fictitious name registrations with the Board for approval prior to filing with the Bureau. Departmental practice is for the Bureau to send copies of all optometric filings to the Board for review. Because the Bureau is essentially a filing office and is not staffed to ensure compliance with the current §§ 23.34 and 23.35, there is no way to enforce the current provisions. In addition, the Board has found no public benefit to the current requirements of these sections.

§ 23.42 (relating to equipment)

The Board proposes to amend § 23.42 first by clarifying that the equipment listed in the section is the minimum required for performing a basic, rather than "complete" optometric examination. In addition, the Board proposes to replace the equipment ophthalmometer with the equipment keratometer. This change reflects current practice.

§ 23.64 (relating to professional conduct)

The Board proposes to add subsection (c) to § 23.64. Subsection (c) would allow an optometrist to terminate his care of a patient who is not adhering to appropriate regimens of care and follow-up. The proposed subsection would require the optometrist to notify the patient in writing and explain why the optometrist was terminating his care of the patient. Finally, the proposed subsection would require the optometrist to copy the patient's record and give the record either to the patient or to the subsequent treating optometrist.

§ 23.71 (relating to patient records)

The Board proposes to amend § 23.71 to reflect current practice. The changes reflect the current terms used ("uncorrected" vision instead of "naked" vision) and refer to the use of perimetry, which is the standard in visual

field testing. In addition, the Board proposes to amend § 23.71 by adding subsection (a)(19) which requires the optometrist to record in the patient's medical record any pharmaceutical agents used or prescribed, including strength, dosage, number of refills and adverse reaction, if applicable. The information updates the regulations in compliance with Act 130's grant of authority to use pharmaceutical agents and reflects proper medical practice in recordkeeping.

Finally, the Board proposes to amend § 23.71(c) by setting forth requirements for optometrists who provide a patient with a contact lens prescription. The current section provides that the optometrist has the discretion to determine whether to provide a patient with a contact lens prescription rather than dispensing the lens to the patient. Some optometrists have been reluctant to provide patients with a contact lens prescription, even when the patient requested the prescription, for fear of liability if the dispenser provides the patient with incorrect lenses. The proposed subsection (c)(1) requires the optometrist to determine all requirements for a satisfactory fit prior to providing a contact lens prescription. This provision protects the optometrist by clarifying the optometrist's responsibility in determining fit requirements for contact lenses. The proposed subsection (c)(2) provides that an optometrist shall consider all contact lenses used in determining the contact lens prescription to be diagnostic lenses. This provision protects the optometrist by clarifying that the optometrist has not determined the final prescription until the optometrist writes the prescription, because any trial lenses used are merely diagnostic.

§ 23.72 (relating to prescriptions)

The Board proposes to amend its regulations by adding requirements for prescriptions in § 23.72. Act 130 expanded the scope of practice of optometry to include "[t]he administration and prescription of legend and nonlegend drugs as approved by the Secretary of Health. . ." 63 P. S. § 244.2. Prior to 1996, optometrists only wrote prescriptions for contact lenses and spectacles, and the Board's regulations did not set requirements for these prescriptions. To standardize practice in this Commonwealth and ensure that all optometrists in this Commonwealth include information important to the patient on any prescription written, the Board proposes requirements on optometric prescriptions generally and proposes to set specific requirements for contact lens, spectacle and pharmaceutical prescriptions.

Proposed § 23.72 would require that all optometric prescriptions bear the name, address and license number of the optometrist, the name of the patient, date the prescription is issued and expiration date. Contact lens prescriptions would have to specify the lens type, all specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case greater than 1 year. These requirements are consistent with the generally accepted standard of optometric practice and ensure that the contact lens dispenser will dispense the proper lenses for the patient as determined by the optometrist. In addition, the maximum of 1 year expiration date ensures that contact lens wearing patients will be rechecked by the optometrist at least yearly, the maximum time period recommended by medical professionals. For spectacles, the maximum time period recommended for reexamination is 2 years. This time period is reflected in § 23.71(b).

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions. The proposed amendments should not create additional paperwork for the Board or the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, SCP/PLC and HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Deborah Smith, Board Administrator, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,
Chairperson

Fiscal Note: 16A-528. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS****PART I. DEPARTMENT OF STATE****Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS****CHAPTER 23. STATE BOARD OF OPTOMETRY
GENERAL PROVISIONS****§ 23.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Means and methods for the examination, diagnosis and treatment of conditions of the visual system—

(i) The means and methods for the examination, diagnosis and treatment of conditions of the visual system that may be employed by licensed optometrists include:

(A) The use of any computerized or automatic refracting device.

(B) Visual field testing such as manual or automated perimetry.

(C) Ophthalmoscopy, including ophthalmoscopy of a patient who has been anesthetized by a practitioner authorized to provide anesthesia services and in accordance with applicable law and regulation governing the anesthesia provider and facility, and with or without the use of diagnostic lenses including, any condensing lenses, gonioscopy lenses and fundus contact lenses.

(D) Anterior and posterior segment photography.

(E) Provocative tests for glaucoma and electrodiagnostic testing.

(F) The use of lasers for diagnostic purposes.

(G) The employment of vision therapy or orthoptics.

(H) Low vision rehabilitation.

(I) Treatment of the lacrimal system including the use of punctal plugs and diagnostic procedures to determine the patency of the lacrimal system.

(J) Epilation of lashes.

(K) Ultrasound examination of the eye and orbit, including A-scans with or without Intraocular Lens calculations and B-scans.

(L) Ordering of radiographs, computer assisted tomography scans ("CAT" scans), magnetic resonance imaging scans ("MRI" scans) and laboratory work.

(M) Ordering, interpretation and reporting of angiographic studies of ocular vasculature and blood flow.

(ii) The practice of optometry includes all levels of evaluation and management services and also includes, for those optometrists who are therapeutically certified, the administration and prescription of approved legend and nonlegend drugs.

* * * * *

BUSINESS PRACTICES**§ 23.33. Practice.**

(a) An optometrist engaged in the active practice of optometry shall practice in a room used exclusively for the practice of optometry **when practicing in his office**. A change in this address, or the addition of places of practice, shall comply with §§ 23.43 and 23.44 (relating to offices; and additional practice locations).

(b) In compliance with § 23.36 (relating to consultant, advisor, staff or employee optometry), an optometrist may arrange the professional practice to include service to a licensed health care service facility, **including in-patient or out-patient hospitals and emergency rooms, nursing homes and long-term care facilities, or any facility with the need for optometric services.**

* * * * *

(e) An optometrist may provide visual screenings at any location, public or private, within this Commonwealth.

(f) * * *

§ 23.34. Professional corporations.

(a) An optometrist licensed by the Board may professionally incorporate with other optometrists, medical doctors, doctors of osteopathy, dentists, psychologists, podiatrists [and], chiropractors[,] and other health care professionals if this incorporation is authorized by Chapter 5, 17, 25, 29, 33 or 41.

(b) [The articles of incorporation and registry statement of the proposed corporation shall be filed with the Board for review and approval, prior to submission to the Corporation Bureau.

(c) The name of a professional corporation will be approved by the Board.] If a name is chosen for the professional corporation which does not contain the names of all the licensed professionals with an ownership interest in the practice, the Board shall be supplied with a list of these persons. [The Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing articles of incorporation.

(d)] An optometrist [incorporating] practicing under the terms of this section shall notify the Board of a change in the name or ownership of the [corporation, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure] business.

§ 23.35. Fictitious names.

* * * * *

(b) [A fictitious name registration shall be filed with the Board for approval, prior to submission to the Corporation Bureau.

(c) A fictitious name will be approved by the Board.] A list of the optometrists with an ownership interest in the practice shall be submitted to the Board concurrently with the fictitious name registration. [The Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing a fictitious name registration.

(d)] An optometrist practicing under the terms of this section shall notify the Board of changes in the name or ownership of the business[, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure].

OFFICE OF OPTOMETRIST**§ 23.42. Equipment**

An office maintained for the practice of optometry shall be fully equipped for the making of a [complete] basic optometrical examination including[, but not limited to,] the following:

- (1) [Ophthalmometer] Keratometer.

* * * * *

UNLAWFUL PRACTICES**§ 23.64. Professional conduct.**

* * * * *

(c) An optometrist may terminate his or her optometric care of a patient who, in the professional opinion of the optometrist, is not adhering to appropriate regimens of care and follow-up.

(1) The optometrist shall notify the patient, in writing, that the optometrist is terminating the professional relationship and the reasons for the termination.

(2) In addition, the optometrist shall make a copy of the patient's medical record available to the patient or successor eye care provider designated by the patient, and may charge a reasonable fee for copying the record.

[RECORDS] PROFESSIONAL PRACTICE**§ 23.71. Patient records.**

(a) An optometrist shall use professional judgment to determine what services are to be provided to his patients. Records of the actual services rendered shall be maintained for a minimum of 5 years after the last consultation with a patient. Records shall indicate when a referral has been made to a physician. An examination may include[, but is not limited to,] the following:

* * * * *

- (2) [Naked] Uncorrected visual acuity.

* * * * *

- (14) Visual fields [, central (after age 40)] including manual or automated perimetry.

* * * * *

(19) Pharmaceutical agents used or prescribed, including strength, dosage, number of refills and adverse reaction, if applicable.

(b) An optometrist shall comply with a patient request for a copy of the patient's spectacle prescription, within 2 years of the patient's last eye examination. Requests for spectacle prescriptions from examinations over 2 years prior to the request[, or for contact lens prescriptions,] may be complied with at the discretion of the optometrist. Requests for contact lens prescriptions may be complied with at the discretion of the optometrist.

(c) [An optometrist's license number shall appear on each prescription written by that optometrist.] An optometrist who, in his discretion, provides a contact lens prescription, shall comply with the following:

(1) The optometrist shall determine the requirements for a satisfactory fit of a contact lens prior to providing a contact lens prescription.

(2) The optometrist shall consider the contact lenses used in determining the contact lens prescription to be diagnostic lenses.

§ 23.72. Prescriptions.

(a) Optometric prescriptions shall bear:

(1) The name, address and license number of the optometrist.

(2) The name of the patient.

(3) The date the prescription is issued by the licensed practitioner.

(4) The expiration date.

(b) Contact lens prescriptions shall specify the lens type, the specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case shall the expiration date be greater than 1 year. The prescription may include a statement of caution or a disclaimer if the statement or disclaimer is supported by appropriate findings and documented in the patient's medical record.

(c) Pharmaceutical prescriptions shall specify the name of the drug prescribed, quantity and potency prescribed, expiration date, number of refills allowed, instructions for use and any indicated precautionary statements.

(d) Spectacle prescriptions shall specify any information that would be relevant to manufacturing glasses including the dioptic value of the sphere, astigmatism, prism, slab off, add power and axis or orientation of the astigmatism correction.

[Pa.B. Doc. No. 03-351. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Branch Lots

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to add § 19.5 (relating to branch lots) to read as set forth in Annex A.

The proposed rulemaking would inform licensees of the conditions under which a licensed dealer may keep vehicles at an unlicensed location used only for storage purposes and the conditions under which a licensed dealer may exhibit a single vehicle at an unlicensed location.

Effective Date

The proposed rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized under section 4 of the Board of Vehicles Act (act) (63 P. S. § 818.4).

Background and Need for the Proposed Rulemaking

Storage of Vehicles

Section 5(e)(1)(ii) of the act (63 P. S. § 818.5(e)(1)(ii)) provides that "[a] branch lot shall be a separately licensed location which meets the facility requirements defined herein and by the regulations as a main lot, unless used solely for the storage of vehicles." As space to park vehicles has become a premium commodity, dealers have developed storage lots that are separate and apart from their dealership facilities. Licensees, the Pennsylvania Independent Automobile Dealers Association (PIADA) and

law enforcement agents have asked the Board to promulgate a regulation further defining "used solely for the storage of vehicles" so that dealers may comply with the act and law enforcement agents may enforce the act. The Board's proposed rulemaking would define storage of vehicles in relation to engaging in the business of a vehicle dealer in a way that is consistent with public protection concerns that prohibit a dealer from conducting sales activity at an unlicensed location.

Single Vehicle Display

Individual licensees and PIADA have asked the Board to clarify whether the placement of a single vehicle at an unlicensed location is always the display of that vehicle for sale, and therefore prohibited, or whether the placement of a single vehicle at an unlicensed location may, under certain circumstances, be considered permissible activity. The licensees' concern arises because many shopping malls approach licensees to place automobiles in the shopping mall. PIADA has informed the Board that this type of vehicle display is permitted in states surrounding this Commonwealth and that Commonwealth dealers believe they are at a competitive disadvantage because the act requires vehicles to be displayed at licensed locations. Some surrounding states permit single vehicle displays at unlicensed locations provided the dealer is issued a special permit for the display. The Board proposes to make a distinction between display for sale which may only occur at a licensed location and other single vehicle display. This distinction will permit a licensed dealer to place a single vehicle at an unlicensed location.

Section 19(34) of the act (63 P. S. § 818.19(34)) authorizes the Board to discipline a dealer who "conducts its business . . . at any other location than that authorized by its license." Under section 2 of the act (63 P. S. § 818.2), a dealer is a person "who is engaged in the business of buying, selling or exchanging new or used vehicles or an interest in new or used vehicles." Section 2 of the act also defines "buying, selling or exchanging" to "include listing, offering, auctioning, advertising, representing or soliciting, offering or attempting to solicit or negotiate on behalf of another a sale, purchase or exchange or any similar or related activity."

With those definitions in mind, clearly the General Assembly did not intend to prohibit all advertising at a location other than the licensed location; a ban would prohibit highway billboards, sideboard advertisements at sporting events and adboards on buses and subways. The General Assembly must have intended to prohibit only activities directly related to buying, selling or exchanging vehicles at locations other than the dealer's licensed location.

Section 19.18(a)(3) (relating to established place of business for dealers) defines a dealer's display area as a place "where the public is permitted and invited in the regular course of business to inspect or test drive . . . vehicles . . . offered for sale." Section 19.18(a)(3) goes on to describe what requirements a "display area" must meet. These requirements include, among other things: adequate space to display and show no fewer than five vehicles; grading, surface and lighting requirements; requirements that the area be separated from other businesses; and requirements that the area have a telephone line, a sign showing the licensed name of the dealer and conspicuously posted business hours. Clearly, places such as a mall or someone's front yard are not "display areas" under the Board's regulations. Proposed § 19.5(c) reinforces the distinction between "display ar-

eas" as defined by § 19.18(a)(3) and an area where a vehicle is parked for use as an advertisement.

The Board has set the display limit at one vehicle to reduce consumer confusion. A consumer encountering one car on display at the county fairgrounds or local shopping mall is likely to consider that car an advertisement and will not be confused, disappointed or surprised to find that the car cannot be "inspected" as it could at a licensed location. By comparison, a consumer encountering several cars on display at a county fairground or shopping mall may reasonably expect to be able to inspect the displayed vehicles. This expectation is reasonable because several cars displayed together resemble a sales lot, whereas one car resembles a three-dimensional billboard.

The Board is cognizant of the concern expressed by many dealers that the prohibition against conducting business at other than the licensed location places Commonwealth dealers at a competitive disadvantage compared with dealers in other states. Dealers wish to display vehicles in high traffic areas, such as shopping malls, or at special events, such as fairs, which draw large numbers of potential customers. The Board must balance the needs of this Commonwealth's licensed dealers with the needs of consumers and must resolve all disputes in light of its primary mission: to protect the public. Allowing a dealer to place a single vehicle at an unlicensed location, provided that no sales activity is conducted at that location, would not conflict with statutory requirements because the dealer would not be conducting business at the unlicensed location. In addition, restricting dealers to placing a single vehicle at an unlicensed location would not undermine the purposes of the act. The Board therefore proposes to amend its regulations to permit a dealer to place a single vehicle at an unlicensed location, with specific conditions to ensure that no sales activity occurs at the unlicensed location.

Description of Proposed Rulemaking

Storage of Vehicles

The proposed rulemaking defines storage of vehicles in contrast to the display or offer for sale of vehicles. A location is used solely for storage if it is identified as a storage-only lot, if no salespersons are present at the lot to converse with potential customers, if the vehicles are not demonstrated for customers at the lot, if the public is not permitted access to the vehicles, if the dealer does not advertise his or her name or other, licensed, locations at the lot and if potential customers may not acquire sales literature at the lot and cannot communicate with the dealer or his representative from the lot.

Single Vehicle Display

The proposed rulemaking requires that an unlicensed area used for display of a single vehicle may not contain the following: (1) more than one vehicle and the vehicle displayed must be locked at all times; (2) salespeople; (3) a sales office; and (4) sales agreement forms or other documents routinely used in vehicle sales transactions. This list reinforces the definition of "display area" given in § 19.18(a)(3) in two ways. First, by not permitting inspection or test-driving of vehicles or dissemination of sales literature, this proposed rulemaking strives to reduce consumer confusion. A consumer encountering a car in a mall is more likely to consider the car an advertisement and not an item for sale if that consumer is unable to enter the vehicle or obtain sales information. Second, by clearly spelling out what may not be present in an area if the dealer wishes to display a car without licensing the area, § 19.5(c) clarifies the rather lengthy definitions in § 19.18(a)(3).

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the Committees' public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Woodall, Administrative Assistant, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, vehicle@pados.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWARD J. CERNIC, Jr.,
Chairperson

Fiscal Note: 16A-605. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

GENERAL PROVISIONS

§ 19.5. Branch lots.

(a) *Facility.* Unless otherwise exempted by the act or this chapter, any location where a licensed vehicle dealer displays or offers vehicles for sale shall be licensed and comply with the facilities requirements set forth in the act and § 19.18 (relating to established place of business for dealers).

(b) *Storage of vehicles.* The storage of vehicles by a licensed vehicle dealer at an unlicensed location will not be considered to be the display or offer for sale of vehicles at that location if:

- (1) The lot is used solely for the storage of vehicles.
- (2) The lot is identified by a sign with the dealership name and a designation that the lot is for "storage only." The area may not otherwise be identified.
- (3) No salesperson is present at the lot other than as necessary to repair, recondition, inspect or move any of the vehicles.
- (4) No salesperson engages in any demonstration or discussion of product features of the vehicles or discusses any terms of sale.
- (5) The public is not permitted access to any of the vehicles at the lot and the vehicles are not capable of being entered or operated (other than by criminal acts).
- (6) No sign or other marking at the lot or on any of the vehicles at the lot (except for a Federally-mandated manufacturer's price sticker) indicates that any of the vehicles at the lot are available for sale at any other location.
- (7) No literature, such as business cards or brochures, is available for potential customers to remove from the lot.
- (8) Potential customers are not able to communicate with a representative of the dealer from the lot, by telephone, e-mail, computer or otherwise, to negotiate the sale of, to obtain additional information concerning, or to otherwise discuss the vehicles at the unlicensed lot or other vehicles available for sale by the dealer.

(c) *Single vehicle display.*

(1) The placement of a single vehicle before the public will not be considered the buying, selling or exchanging of the vehicle, as defined in section 2 of the act (63 P. S. § 818.2), if:

- (i) The placement is by a vehicle dealer licensed in this Commonwealth.
- (ii) No more than one vehicle is placed at the location.
- (iii) A salesperson present at the location does not discuss the features of the vehicle or other vehicles handled by the dealership and does not negotiate or conclude the sale of the vehicle or another vehicle of the dealer.
- (iv) There is no sales office at the location.
- (v) There are no sales agreement forms or other documents routinely used in vehicle sales transactions present at the location.
- (vi) The vehicle is locked or otherwise not capable of being entered or operated by potential customers or others (other than by criminal acts).
- (vii) The location is not at the licensed premises of any vehicle dealer or vehicle auction.

(2) This subsection applies to the placement of automobiles, light trucks and motorcycles, but does not apply to the placement of recreational vehicles, mobile homes, manufactured housing and other vehicles not identified in this subsection.

[Pa.B. Doc. No. 03-352. Filed for public inspection February 28, 2003, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Referendum on Continuation of the Pennsylvania Vegetable Marketing and Research Program

I. The Pennsylvania Vegetable Marketing and Research Program (Program) was initially established in 1989 under the provisions of the Pennsylvania Agricultural Commodities Marketing Act of 1968 (act) (3 P. S. §§ 1001—1013). The act requires that the Secretary of Agriculture (Secretary) call a referendum of affected producers every 5 years to determine whether or not a majority of those voting still desire the Program. The Program was continued through a review referendum conducted in 1998. It is now time for another review referendum to determine whether a majority of the vegetable producers will desire the Program to continue.

II. *Referendum Period:* The referendum shall be held from March 17, 2003, until 4 p.m. on March 31, 2003. Completed ballots shall be mailed or hand delivered to the Department of Agriculture, Commodity Promotion Division, Room 311, 2301 North Cameron Street, Harrisburg, PA 17110-9408. Hand-delivered ballots must be received by 4 p.m. on March 31, 2003. Ballots that are mailed must be postmarked by March 31, 2003, and received by April 7, 2003.

III. *Notice of Referendum:* This referendum order, the Program order and official ballot shall be mailed by March 14, 2003, to all affected producers whose names appear on the list of the Pennsylvania vegetable producers maintained in the Office of the Bureau of Markets. Additional copies of the same materials shall be made available at the Office of the Secretary.

IV. *Eligible Voters:* The rules governing the eligibility of

a producer for voting are as follows: The record date for determination of whether a producer is eligible to vote is October 31, 2002. Vegetable producers within this Commonwealth who grow one or more acres of vegetables for sale are eligible to vote, as are all producers who, for the purpose of selling, grow vegetables in 1,000 square feet or more of greenhouse area. Greenhouse area used to produce vegetable transplants for outdoor use shall not be included. Producers with 1 or more acres of vegetable production or 1,000 or more square feet of greenhouse vegetable production, as of October 31, 2002, are entitled to vote.

V. *Counting of Ballots:* The ballots will be conveyed and counted by a Teller Committee appointed by the Secretary. The counting of the ballots will begin at 10 a.m. on Thursday, April 10, 2003, in the State Agriculture Building, Harrisburg, PA. The Secretary will announce the results of the referendum within 30 days following the completion of the referendum period. The results will be published in the *Pennsylvania Bulletin* and disseminated to the news media.

VI. *Reporting Irregularities:* Irregularities or disputes concerning the referendum procedures must be reported in written form to the Secretary no later than 7 calendar days from the end of the referendum period.

VII. *Publication:* This referendum order shall be published in the *Pennsylvania Bulletin* and the *Harrisburg Patriot*.

VIII. *Effective Date:* The foregoing order shall be effective from and after February 17, 2003.

DENNIS C. WOLFF,
Acting Secretary

[Pa.B. Doc. No. 03-353. Filed for public inspection February 28, 2003, 9:00 a.m.]

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending February 18, 2003.

BANKING INSTITUTIONS

New Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
2-13-03	East Penn Interim Bank Emmaus Lehigh County	Emmaus	Approved

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
2-12-03	Clearfield Interim Bank and Trust Company, Clearfield, and Clearfield Bank and Trust Company, Clearfield Surviving Institution— Clearfield Interim Bank and Trust Company, Clearfield	Clearfield	Approved
Merger application was filed solely to facilitate the acquisition of Clearfield Bank and Trust Company by CBT Financial Corp., Clearfield, a new bank holding company in organization.			

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
2-5-03	Farmers and Merchants Trust Company of Chambersburg Chambersburg Franklin County	Menno Haven Retirement Community 2075 Scotland Avenue Chambersburg Franklin County	Opened
2-11-03	Orrstown Bank Shippensburg Cumberland County	1355 Orchard Drive Chambersburg Franklin County	Filed
2-12-03	Fidelity Savings Bank Pittsburgh Allegheny County	1339 Freedom Road Cranberry Township Butler County	Filed
2-14-03	Hometowne Heritage Bank Intercourse Lancaster County	1298 Georgetown Road Quarryville Lancaster County	Opened

Branch Relocations/Consolidations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
2-14-03	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Eleven branch offices to be consolidated with existing branches as follows:	Filed
	<i>To:</i> 3514 West Chester Pike Newtown Square Delaware County	<i>To:</i> 7327 Frankford Avenue Philadelphia Philadelphia County	
	<i>From:</i> 3531 West Chester Pike Newtown Square Delaware County	<i>From:</i> 7425 Frankford Avenue Philadelphia Philadelphia County	
	<i>To:</i> 222 West Main Street Collegeville Montgomery County	<i>To:</i> 3500 Aramingo Avenue Philadelphia Philadelphia County	
	<i>From:</i> 201 Second Avenue Collegeville Montgomery County	<i>From:</i> 3745 Aramingo Avenue Philadelphia Philadelphia County	
	<i>To:</i> 25 East Main Street Lansdale Montgomery County	<i>To:</i> 1515 Market Street Philadelphia Philadelphia County	
	<i>From:</i> 638 East Main Street Lansdale Montgomery County	<i>From:</i> 30 South 15th Street Philadelphia Philadelphia County	
	<i>To:</i> 25 East Main Street Lansdale Montgomery County	<i>To:</i> 6537 Castor Avenue Philadelphia Philadelphia County	
	<i>From:</i> 521 West Main Street Lansdale Montgomery County	<i>From:</i> 6331 Castor Avenue Philadelphia Philadelphia County	
	<i>To:</i> 202 West Ridge Pike Conshohocken Montgomery County	<i>To:</i> 6537 Castor Avenue Philadelphia Philadelphia County	

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
<i>From:</i>	200 West Ridge Pike Conshohocken Montgomery County	<i>From:</i> 6301 Oxford Avenue Philadelphia Philadelphia County	
<i>To:</i>	5 West Germantown Pike East Norriton Montgomery County		
<i>From:</i>	61 East Germantown Pike East Norriton Montgomery County		

Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
2-11-03	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	70 Commerce Drive Wyomissing Berks County	Authorization Rescinded

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

A. WILLIAM SCHENCK, III,
Actng Secretary

[Pa.B. Doc. No. 03-354. Filed for public inspection February 28, 2003, 9:00 a.m.]

Maximum Lawful Rate of Interest for Residential Mortgages for the Month of March 2003

The Department of Banking (Department), under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of March 2003, is 7%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221). Further preemption was instituted with the signing of Pub. L. No. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which the individual owns and which the individual occupies or has occupied as a principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential mortgages in this Commonwealth. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 4.54 to which was added 2.50 percentage points for a total of 7.04 that by law is rounded off to the nearest quarter at 7%.

A. WILLIAM SCHENCK, III,
Acting Secretary

[Pa.B. Doc. No. 03-355. Filed for public inspection February 28, 2003, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Pennsylvania Heritage Parks Program Grant Application Announcement for Fiscal Year 2003-2004

The Department of Conservation and Natural Resources (Department) announces that applications are now being accepted for grants to be funded from the 2003-2004 fiscal year Pennsylvania Heritage Parks Program (Program). Funding is subject to an appropriation being made available to the Department for the Program in the upcoming 2003-2004 fiscal year budget. The deadline for submission of applications is Friday, May 16, 2003. Applications must be received by 5 p.m. in the Harrisburg Central Office of the Department's Bureau of Recreation and Conservation. Applications received after this deadline will not be considered for funding. Fax submissions are not acceptable.

It is the intent of the Program to create a system of State Heritage Parks that will preserve and interpret the significant contributions that certain regions of this Commonwealth have made to the industrial heritage of the State and Nation. The historic, cultural, natural, scenic and recreational resources within a State Heritage Park area are inventoried, preserved, enhanced and promoted as a strategy to enhance regional economic development through the attraction of tourists, creation of new jobs, stimulation of small business growth and the promotion of public and private investment opportunities. There are currently 11 designated State Heritage Parks including the Allegheny Ridge State Heritage Park, the Delaware and Lehigh National Heritage Corridor, the Endless Mountains Heritage Region, the Lackawanna Heritage Valley Authority, the Lancaster-York Heritage Region, the Lincoln Highway Heritage Corridor, the Lumber Heritage

Region, the National Road Heritage Park, the Oil Heritage Region, the Rivers of Steel Heritage Area and the Schuylkill River Heritage Corridor.

Designated State Heritage Parks are eligible to apply for grants to undertake heritage park management activities, special purpose studies and implementation projects. Other regions wishing to participate in the Program may apply for feasibility study grants if they meet the following criteria and are prequalified by the Department:

—Must have a strong industrial theme based on one or more of the following industries: coal, oil, iron and steel, lumber, textile, transportation, machine and foundry, and agriculture.

—Must be multicounty in size.

—Must have natural, cultural, historic, recreational and scenic resources of State or National significance.

—Have a broad-based public and private partnership and regional coalition supporting the project.

—Must demonstrate a local commitment and leadership capacity to undertake the initiative.

Program Manual/Application Forms

The Program manual provides more specific information on funding levels, program requirements and the application process for this round of funding. The Program manual and application forms are available from the Department. Since each project type has a specific set of application forms and instructions, specify the type of project when requesting application forms. The Program manual, application forms and additional information about the program can be obtained from Tim Keptner, Chief, Regional Services Division, Bureau of Recreation and Conservation, Pennsylvania Heritage Parks Program, Department of Conservation and Natural Resources, 6th Floor, Rachel Carson State Office Building, P. O. Box 8475, Harrisburg, PA 17105-8475, (717) 783-0988.

Persons with a disability who wish to submit an application for Program funding and require assistance with the application should contact Darrel J. Siesholtz at (717) 783-2661 to discuss how the Department may best accommodate their needs. TTY or TDD users should call (800) 654-5984.

MICHAEL DIBERARDINIS,
Acting Secretary

[Pa.B. Doc. No. 03-356. Filed for public inspection February 28, 2003, 9:00 a.m.]

Snowmobile and ATV Advisory Committee Meeting

The meeting of the Snowmobile and ATV Advisory Committee of the Department of Conservation and Natural Resources (Department) will be held on Tuesday, March 11, 2003, at 9:30 a.m. in Room 105, First Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items should be directed to GERALYN UMSTEAD at (717) 772-9087.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact GERALYN UMSTEAD at (717) 772-9087 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL DIBERARDINIS,
Acting Secretary

[Pa.B. Doc. No. 03-357. Filed for public inspection February 28, 2003, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS

NPDES APPLICATIONS

PART I PERMITS

Under the Federal Clean Water Act and The Clean Streams Law, the following parties have applied for an NPDES permit or to renew their current permit to discharge controlled wastewaters into the waters of this Commonwealth or to conduct other activities required by the NPDES permit. For renewal applications listed in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements. For new permit applications, renewal application with major changes or applications for permits not waived by the EPA, the Department, based upon preliminary reviews, also made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications listed in Section II. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement, to the office noted before the application, within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. The comments should include

the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant. Following the comment period, the Department's Water Management Program Manager will make a final determination regarding these applications. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The renewal application, including proposed effluent limitations and special conditions, is available on file. For new permit applications, information submitted with the applications is available on file. The information may be inspected and arrangements made for copying at the office indicated before the application.

Persons with a disability, who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information, should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0057401	S & S Styles Inc. 6801 Easton Road Pipersville, PA 18947-9717	Bucks County Bedminster Township	UNT to Cabin Run	Y
PA0055620	David A. Whinfrey 60 Chapel Hill Road Media, PA 19063	Delaware County Upper Providence Township	Ridley Creek	Y
PA0055816	Walter W. Holmes 138 Kirk Road Boothwyn, PA 19061	Delaware County Concord Township	UNT to Green Creek	Y
PA0031208	Garnet Valley School District 80 Station Road Glen Mills, PA 19342	Delaware County Concord Township	Green Creek	Y
PA0053074	Valley Green Corporate Center c/o Sentry Realty Services Inc. P. O. Box 310 Abington, PA 19001-0310	Montgomery County Whitemarsh Township	Sandy Run Creek	Y

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0061441	Freeman's Mobile Home Park R. R. 1, Box 160-14 Dallas, PA 18612	Wyoming County Monroe Township	Unnamed tributary to Leonard's Creek 4G	Y

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110; (717) 705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0084123	Penn Township Municipal Authority 100 Municipal Bldg. Rd. Duncannon, PA 17020	Perry County Penn Township	Cove Creek 7A	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0103292, Sewage, **Hamilton Township—Village of Ludlow**, US Highway 6 West, Ludlow, PA 16333. This existing facility is located in Hamilton Township, **McKean County**.

Description of Proposed Activity: Renewal of an NPDES permit for existing discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Emlenton Water Company on the Allegheny River located at River Mile 90, 109.6 miles below point of discharge.

The receiving stream, unnamed tributary to Two Mile Creek, is in watershed 16-F and classified for HQ-CWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.070 MGD.

<i>Parameters</i>	<i>Loadings</i>		<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Average Weekly (lb/day)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	XX	XX	XX
CBOD ₅	15	23	25	40	50
Total Suspended Solids	18	26	30	45	60
NH ₃ -N (5-1 to 10-31)	12		20		40
Total Residual Chlorine			1.0		2.3
Fecal Coliform (5-1 to 9-30)		200/100 ml as a geometric average			
(10-1 to 4-30)		21,000/100 ml as a geometric average			
pH		6.0 to 9.0 standard units at all times			

The EPA Waiver is in effect.

PA0104396, Industrial Waste, **Village Farms, L. P.**, HW—SR 3001, P. O. Box 200, Ringgold, PA 15770. This proposed facility is located in Ringgold Township, **Jefferson County**.

Description of Proposed Activity: an existing discharge of treated industrial waste.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Allegheny River and Pennsylvania American Water Company located at Kittanning, 30 miles below point of discharge.

The receiving stream, Caylor Run, is in watershed 17-C and classified for CWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 301 based on a design flow of 0.0013 MGD.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX		
CBOD ₅	25		50
Total Suspended Solids	30		60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	100,000/100 ml as a geometric average		
TRC	0.5		1.6
pH	6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 401 based on a design flow of various intermittent discharges.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>

This discharge shall consist solely of overflow from the stormwater collection/greenhouse irrigation pond.

The proposed effluent limits for Outfall 601 based on a design flow of 0.09 MGD.

<i>Parameters</i>	<i>Loadings</i>		<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Maximum Daily (lb/day)</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX				
Total Suspended Solids	XX	XX	30	100	100
pH			6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 001 based on a design flow of 0.1 MGD.

<i>Parameters</i>	<i>Loadings</i>		<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Maximum Daily (lb/day)</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX				
Mercury (Interim)	XX		0.3		0.75
(Final)	XX		0.1		0.25

Parameters	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
pH			6.0 to 9.0 standard units at all times		

XX—Monitor and report.

The EPA Waiver is in effect.

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

PA0027031, Sewage, **Borough of West Chester**, 401 East Gay Street, West Chester, PA 19380. This application is for renewal of an NPDES permit to discharge treated sewage from West Chester Borough's Goose Creek STP in West Goshen Township, **Chester County**. This is an existing discharge to Chester Creek (locally known as Goose Creek).

The receiving stream is classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 1.672 MGD are as follows:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD ₅			
(5-1 to 10-31)	15	23	30
(11-1 to 4-30)	25	40	50
Suspended Solids	30	45	60
Ammonia (as N)			
(5-1 to 10-31)	1.5	2.3	3.0
(11-1 to 4-30)	4.5	6.8	9.0
Total Residual Chlorine	0.03		0.10
Fecal Coliform	200 colonies/100 ml as a geometric average		
Dissolved Oxygen	minimum of 5.0 mg/l at all times		
pH	Within limits of 6.0—9.0 Standard Units at all times		
Phenols, Total	0.018	0.036	0.045
Zinc, Total	Monitor and Report		
Chloroform	Monitor and Report		
Lead, Total	Monitor and Report		
Copper, Total	Monitor and Report		

Other Conditions: conditions for future permit modification; implementation of industrial pretreatment program requirements; effective disinfection; and special test methods for certain pollutants.

The EPA Waiver is not in effect.

PA0055573, Industrial Waste, **Sovereign Packaging Group, Inc.**, 765 Pike Springs Road, Phoenixville, PA 19442. This application is for renewal of an NPDES permit to discharge cooling water and stormwater from noncontact cooling tower water and stormwater runoff from the Kimberton Facility in East Pikeland Township, **Chester County**. This is an existing discharge to an unnamed tributary to French Creek.

The receiving stream is classified for TSF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.016 MGD are as follows:

Parameter	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Temperature			110°F
pH	Within limits of 6.0—9.0 Standard Units at all times		
Trichloroethylene	Monitor and Report	Monitor and Report	

This facility was formerly known as Pierce and Stevens Corporation.

The EPA Waiver is in effect.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

PA0013218, Industrial, SIC 3081, **Tredegear Film Products—Pottsville, Inc.**, P. O. Box 160, Maple Avenue, Mar Lin, PA 17951-0160. This proposed facility is located in Norwegian, **Schuylkill County**.

Description of Proposed Activity: Renewal of an NPDES Permit.

The receiving stream, Schuylkill River, is in the State Water Plan watershed no. 3A and is classified for CWF. The nearest downstream public water supply intake for Pottstown Borough Water Authority is located on the Schuylkill River, 49 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.0255.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>
BOD ₅		5.50		
Total Suspended Solids		4.00		
Oil and Grease	3.20	6.15	15.0	30.0
pH		6.0 to 9.0 at all times.		

Outfall 002 is permitted to discharge uncontaminated stormwater only.

PA0063681, Industrial, SIC Code 7513, **Penske Truck Leasing Co., L. P.**, Route 10, Green Hills, Reading, PA 19603. This proposed facility is located in North Manheim Township, **Schuylkill County**.

The receiving stream, Schuylkill River, is in the State Water Plan watershed no. 03A and is classified for CWF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Pottstown Borough Water Authority is located on the Schuylkill River, approximately 30 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.000125 MGD are.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	
Oil and Grease	15		30
pH	6.0 to 9.0 standard units at all times.		

The EPA waiver is in effect.

PA0036765, Sewage, **Tyler Memorial Hospital**, 880 SR 6 W, Tunkhannock, PA 18657. This proposed facility is located in Tunkhannock Township, **Wyoming County**.

Description of Proposed Activity: Renewal of NPDES Permit to discharge treated sewage.

The receiving stream, Taques Creek, is in the State Water Plan watershed no. 4F and is classified for CWF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Danville Water Company is located on the Susquehanna River, approximately 80 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of .02417.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25		50
Total Suspended Solids	30		60
NH ₃ -N (5-1 to 10-31)	9		18
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times.		
Total Residual Chlorine	1.2		2.8

PA0032859, Sewerage, **Department of Transportation, District 5**, 1713 Lehigh Street, Allentown, PA 18103-4727. This proposed facility is located in Pocono Township, **Monroe County**.

Description of Proposed Activity: This proposed action is for renewal of an NPDES permit to discharge treated sewage into an unnamed tributary of Pocono Creek in Pocono Township, Monroe County.

The receiving stream, Pocono Creek, is in the State Water Plan watershed no. 01E and is classified for HQ-CWF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for City of Easton is located on the Delaware River, approximately 40 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.009 MGD are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Total Suspended Solids	30	60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean	
(10-1 to 4-30)	2,000/100 ml as a geometric mean	
NH ₃ -N (5-1 to 10-31)	7.5	15

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Dissolved Oxygen	A minimum of 6.0 mg/l at all times	
pH	6.0 to 9.0 standard units at all times.	

The EPA waiver is in effect.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

PA0030643, Sewage, SIC Code 4952, **Shippensburg Borough**, P. O. Box 129, Shippensburg, PA 17257. This facility is located in Shippensburg Borough, **Franklin County**.

Description of activity: The application is for amendment of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Middle Spring Creek, is in Watershed 7-B and classified for CWF, water supply and recreation and fish consumption. The nearest downstream public water supply intake for Carlisle Borough is located in North Middleton Township, Cumberland County. The discharge is not expected to affect the water supply.

The proposed amended effluent limits for Outfall 001 for a design flow of 3.3 MGD: The draft amended permit proposes removal of interim and final requirements and effluent limitations for antimony and mercury based on the results of the Toxic Reduction Evaluation Phase I Report.

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is not in effect.

PA0081931, Sewage, **Shawnee Valley Ambulance**, 166 Valley Road, P. O. Box 8, Schellsburg, PA 15559. This facility is located in Napier Township, **Bedford County**.

Description of activity: The application is for an amendment of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, unnamed tributary Shawnee Branch, is in Watershed 11-C and classified for WWF, water supply and recreation and fish consumption. The nearest downstream public water supply intake for the Bedford Water Authority is located on the Raystown Branch Juniata River, approximately 6 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 0.001 for a design flow of 0.0004 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Suspended Solids	30	60
Total Residual Chlorine	1.5	2.5
Dissolved Oxygen	Minimum of 5.0 at all times	
pH	From 6.0 to 9.0 inclusive	
Fecal Coliform	200/100 ml as a geometric average	
(5-1 to 9-30)	32,000/100 ml as a geometric average	
(10-1 to 4-30)		

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is in effect.

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; (412) 442-4000.

PA0046426-A1, Sewage, **Franklin Township Sewer Authority**, 570 Rolling Meadows Road, Waynesburg, PA 15370. This application is for amendment of an NPDES permit to discharge treated sewage from Franklin Township Wastewater Treatment Plant in Franklin Township, **Greene County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as South Fork Tenmile Creek, which are classified as WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Tri-County Joint Municipal Authority.

Outfall 001: existing discharge, design flow of 1.25 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen (5-1 to 10-31)	2.5	3.8		5.0
(11-1 to 4-30)	4.0	6.0		8.0
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,400/100 ml as a geometric mean			
Total Residual Chlorine	0.3			1.1
Dissolved Oxygen	not less than 5 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is not in effect.

PA0219363, Sewage, **Pyramid Healthcare, Inc.**, 1512 12th Avenue, Altoona, PA 16601. This application is for issuance of an NPDES permit to discharge treated sewage from Pyramid Healthcare STP No. 2 in Reade Township, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Powell Run, which are classified as CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Pennsylvania American Water Company on the West Branch Susquehanna River near Milton.

Outfall 001: new discharge, design flow of 0.00172 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	10,000/100 ml as a geometric mean			
Total Residual Chlorine	Monitor and Report			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0238937, Sewage, **Middlesex Township**, 133 Browns Hill Road, Valencia, PA 16059-3101. This proposed facility is located in Middlesex Township, **Butler County**.

Description of Proposed Activity: New discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, sulfates, chlorides and phenolics, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Zelienople Municipal Water Company intake on the Connoquenessing Creek located at Zelienople, approximately 18 miles below point of discharge.

The receiving stream, South Branch Glade Run, is in watershed 20-C and classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.625 MGD.

<i>Parameters</i>	<i>Loadings</i>		<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Average Weekly (lb/day)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow (MGD)	XX				
CBOD ₅	130	209	25	40	50
Total Suspended Solids	156	235	30	45	60
NH ₃ -N (5-1 to 10-31)	10.4		2		4
(11-1 to 4-30)	31.3		6		23
Phosphorus (as P) (4-1 to 10-31)	10.4		2		4

<i>Parameters</i>	<i>Loadings</i>		<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Average Weekly (lb/day)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)			200/100 ml as a geometric average 2,900/100 ml as a geometric average		
Ultraviolet Light Intensity (µw/cm)			XX		
Dissolved Oxygen			Minimum of 4 mg/l at all times.		
pH			6.0 to 9.0 standard units at all times		

XX—Monitor and Report

The EPA Waiver is in effect.

PA0239054, Sewage, **Robert F. Deinert**, 604 Elmwood Avenue, Grove City, PA 16127. This proposed facility is located in Wayne Township, **Crawford County**.

Description of Proposed Activity: New existing discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, sulfates, chlorides and phenolics, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Franklin General Authority on French Creek located at Franklin, approximately 15 miles below point of discharge.

The receiving stream, unnamed tributary to Sugar Creek, is in watershed 16D and classified for CWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX		XX
CBOD ₅	10		20
Total Suspended Solids	20		40
Fecal Coliform		200/100 ml as a geometric average	
Total Residual Chlorine		Monitor and Report	
pH		6.0 to 9.0 standard units at all times	

The EPA Waiver is in effect.

PA0239062, Sewage, **Norbert F. Dietrich**, 30002 Lake Creek Road, Cochranon, PA 16314. This proposed facility is located in Wayne Township, **Crawford County**.

Description of Proposed Activity: New existing discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, sulfates, chlorides and phenolics, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Franklin General Authority on French Creek located at Franklin, approximately 15 miles below point of discharge.

The receiving stream, unnamed tributary to Sugar Creek, is in watershed 16D and classified for CWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX		XX
CBOD ₅	10		20
Total Suspended Solids	20		40
Fecal Coliform		200/100 ml as a geometric average	
Total Residual Chlorine		Monitor and Report	
pH		6.0 to 9.0 standard units at all times	

The EPA Waiver is in effect.

PA0238953, Sewage, **El Ameen Majied**, 2122 Philadelphia Road, Springboro, PA 16435. This proposed facility is located in Beaver Township, **Crawford County**.

Description of Proposed Activity: New existing discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, sulfates, chlorides and phenolics, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is Lake Erie.

The receiving stream, unnamed tributary to West Branch Conneaut Creek, is in watershed 15A and classified for CWF, MF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow	XX		XX
CBOD ₅	10		20
Total Suspended Solids	20		40
Fecal Coliform		200/100 ml as a geometric average	
pH		6.0 to 9.0 standard units at all times	

The EPA Waiver is in effect.

WATER QUALITY MANAGEMENT PERMITS

CONTROLLED INDUSTRIAL WASTE AND SEWAGE WASTEWATER

APPLICATIONS UNDER THE CLEAN STREAMS LAW

PART II PERMITS

The following permit applications or requests for plan approval have been received by the Department of Environmental Protection (Department).

Persons wishing to comment on an application are invited to submit a statement to the office noted before the application, within 15 days from the date of this public notice. Comments received within this 15-day comment period will be considered in making the final decision regarding the application. The comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department reserves the right to hold a public hearing if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation of the area. If no hearing is held, the Department's Water Management Program Manager will make a final determination regarding the applications after a complete review. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

A copy of the permit application or proposed plan is on file in the office indicated and is open to public inspection. Appointments to review the application may be made by contacting Records Management at the indicated telephone number.

I. Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P.S. §§ 691.1—691.1001).

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

WQM Permit No. 4503402, Farda Realty Associates, L. P. c/o The Summit Resort, P. O. Box 130, Tannersville, PA 18372. This proposed facility is located in Pocono Township, **Monroe County**.

Description of Proposed Action/Activity: This project consists of the construction of a 100,000 GPD wastewater treatment facility to service the proposed Tannersville Factory Stores Complex to be located on the west side of Interstate 80 at the SR 715 intersection in Pocono Township, Monroe County. The proposed facility will be

constructed in two stages, of 50,000 GPD each, ultimately comprising a 100,000 GPD facility.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

WQM Permit No. 2103402, Sewerage, Shawn Snyder, 501 Conodoguinet Avenue, Carlisle, PA 17013. This proposed facility is located in Lower Frankford Township, **Cumberland County**.

Description of Proposed Action/Activity: Construction of a small flow sewage treatment system to serve a residence on Meadowbrook Drive.

WQM Permit No. 0703401, Sewerage, Michael Mahr, Jr., 217 East Walnut Avenue, Altoona, PA 16601. This proposed facility is located in Freedom Township.

Description of Proposed Action/Activity: Construction of a small flow sewage treatment system to serve their residence on SR 164.

NPDES Stormwater Individual Permit

The following parties have applied for an NPDES permit to discharge stormwater associated with a construction activity into waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the appropriate Department Regional Office noted before the application, within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and relevant facts upon which it is based. A public hearing may be held after consideration of comments received by the appropriate Department Regional Office during the 30-day public comment period.

Following the 30-day comment period, the appropriate Regional Office Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in

the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the office identified in this notice.

Persons with a disability who require an auxiliary aid, service or other accommodation to participate during the

30-day public comment period should contact the specified Regional Office. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Potter County Conservation District: 107 Market St., Coudersport, PA 16915, (814) 274-8411, Ext. 4.

NPDES
No.

PAI2045303001

Applicant Name and
Address

Coudersport Borough Authority
201 South West St.
Coudersport, PA 16915

County and
Municipality

Potter County
Coudersport Borough

Receiving
Water/Use

Mill Creek
HQ-CWF

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Butler Conservation District: 122 McCune Drive, Butler, PA 16001-6501, (724) 284-5270.

NPDES Permit PAI2061003001, Stormwater, **Knoch Farms Development LLC**, 2000 Mount Troy Road, Pittsburgh, PA 15212-1399 has applied to discharge stormwater associated with a construction activity located in Clinton and Jefferson Townships, **Butler County** to Little Buffalo Creek, HQ-TSF.

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act, the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on the permit application are invited to submit a statement to the office listed before the application, within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. Comment responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Permit No. 4089527-A1, Public Water Supply.

Applicant	Bonham Nursing Center
Township or Borough	Stillwater Borough, Carbon County
Responsible Official	James Bonham 477 Bonnieville Road Stillwater, PA 17878
Type of Facility	Community Water System
Consulting Engineer	Paul A. Krizan, P. E. Larson Design Group 1000 Commerce Park Drive Williamsport, PA 17701
Application Received Date	January 31, 2003
Description of Action	Addition of treatment to include a water softener, granulated carbon filter and particle filter units.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 0603501, Public Water Supply.

Applicant	Reading Area Water Authority
Municipality	City of Reading
County	Berks
Responsible Official	Anthony J. Consentino, Executive Director 815 Washington Street Reading, PA 19601
Type of Facility	PWS
Consulting Engineer	Thomas L. Weld, Jr., P. E. BCM Engineers 920 Germantown Pike Plymouth, PA 19462

Application Received January 24, 2003
 Date
 Description of Action Construction of an 800 gpm high service booster pumping station.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Application No. Minor Amendment, Public Water Supply.

Applicant **Stony Fork Associates, LLC**
 4232 Fowler Ave.
 Baltimore, MD 21236

Township Stony Fork Township

Responsible Official Sherman T. Hill, President
 Stony Fork Associates, LLC
 4232 Fowler Ave.
 Baltimore, MD 21236

Type of Facility PWS—Transfer from H. Lyle Taylor, Country Living MHP to Stony Fork Associates, LLC

Application Received February 4, 2003
 Date

MINOR AMENDMENT

Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. Minor Amendment.

Applicant **Silver Springs Mountain Water Company**

Township or Borough Silver Lake Township

Responsible Official Francis Flynn
 Silver Springs Mountain Water Company
 Box 1365
 Friendsville, PA 18818

Type of Facility Bottled Water System

Application Received January 23, 2003
 Date

Description of Action Transfer of ownership of Silver Springs Mountain Water Company public water supply facilities from Patricia Flynn and Sandra L. Kelley to Patricia Flynn and Andrea S. Aukema.

Application No. 3480075, Minor Amendment.

Applicant **Hometown Mountain View, LLC**

Township or Borough Lehigh Township
Northampton County

Responsible Official Barry McCabe, President
 150 North Wacker Drive, Suite 900
 Chicago, IL 60606

Type of Facility Community Water System

Application Received January 30, 2003
 Date
 Description of Action Transfer PWS operations permit No. 3480075, issued May 8, 2001, to Mountain View MHC

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the Act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the Act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department Regional Office after which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordina-

tor at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Northcentral Region: Environmental Cleanup Program, 208 West Third Street, Williamsport, PA 17701.

Mike Menapace Property, Sugarloaf Township, **Columbia County**. Quad 3 Group, Inc., on behalf of Mike Menapace, 550 Church Road, Mountaintop, PA 18707, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with No. 2 Fuel Oil. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Press Enterprise* on February 28, 2003.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Applications Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southeast Region: Regional Solid Waste Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Permit Application No. 101376. Forge Inc., 5245 Bleigh Ave., Philadelphia, PA 19136-4225, Philadelphia City, **Philadelphia County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 20, 2002.

Permit Application No. 101226. Savoys Transfer Station, P. O. Box 339, Claymont, DE 19703-0339, Chester Township, **Delaware County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 26, 2002.

Permit Application No. 101659. Champion Recycling Inc. c/o Galante Hauling, 16 Yeaton Lane, Glenmoore, PA 19343, East Caln Township, **Chester County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 24, 2002.

Permit Application No. 101237. J. P. Mascaro & Sons Inc., 320 Godshall Dr., Harleysville, PA 19438-2008, Franconia Township, **Montgomery County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 24, 2002.

Permit Application No. 101497. Great Valley Recycling Inc., 320 Godshall Dr., Harleysville, PA 19438, Bridgeport Borough, **Montgomery County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 24, 2002.

Permit Application No. 101631. Eldredge Inc., 898 Fernhill Rd., West Chester, PA 19380-4202, West Goshen Township, **Chester County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Permit Application No. 101390. Waste Mgmt. of Indian Valley, 400 Progress Dr., Telford, PA 18969-1191, Hilltown Township, **Bucks County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 19, 2002.

Permit Application No. 101468. Republic Svc. of Pa., 4145 E. Baltimore Pike, Media, PA 19063, Philadelphia City, **Philadelphia County**. Application for a radiation protection action plan for the Girard Point MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Permit Application No. 100973. Republic Svc. of Pa., 4145 E. Baltimore Pike, Media, PA 19063, Philadelphia City, **Philadelphia County**. Application for a radiation protection action plan for the Quickway MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Permit Application No. 101413. Republic Svc. of Pa., 4145 E. Baltimore Pike, Media, PA 19063, Chester City, **Delaware County**. Application for a radiation protection action plan for the McCusker MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Permit Application No. 101639. L & S Demo Recycling, 884 Brook Rd., Conshohocken, PA 19428, Plymouth Township, **Montgomery County**. Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 24, 2002.

Permit Application No. 101609. BFI Waste Sys. of North America Inc., 400 River Rd., Conshohocken, PA 19428-2600, Upper Merion Township, **Montgomery County**. Application for a radiation protection action plan for the River Road MSW transfer station. The application was received by the Southeast Regional Office on December 26, 2002.

Permit Application No. 101463. BFI Waste Sys. of North America Inc., 2904 S. Delaware Ave., Philadelphia, PA 19148-5106, Philadelphia City, **Philadelphia County**. Application for a radiation protection action plan for the TRC MSW transfer station. The application was received by the Southeast Regional Office on December 26, 2002.

Permit Application No. 101477. BFI Waste Sys. of North America Inc., 2209 S. 58th St., Philadelphia, PA 19143, Philadelphia City, **Philadelphia County**. Application for a radiation protection action plan for the Transcyclery MSW transfer station. The application was received by the Southeast Regional Office on December 26, 2002.

Permit Application No. 100817. Waste Sys. Auth. of Eastern Montgomery County, Ste. 300, One Lafayette Pl., Norristown, PA 19401, Upper Dublin Township, **Montgomery County**. Application for a radiation protection action plan for the Abington MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Permit Application No. 101076. Lower Merion Township, 75 E. Lancaster Ave., Ardmore, PA 19003-2323, Lower Merion Township, **Montgomery County**. Application for a radiation protection action plan for the Lower Merion MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Permit Application No. 101432. Onyx Waste Svc. Inc., P. O. Box 30, Norristown, PA 19404, Norristown Borough, **Montgomery County.** Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Permit Application No. 101290. Waste Mgmt. of Pa. Inc., 1121 Bordentown Rd., Morrisville, PA 19067, Philadelphia City, **Philadelphia County.** Application for a radiation protection action plan for the Philadelphia Transfer and Recycling MSW transfer station. The application was received by the Southeast Regional Office on December 20, 2002.

Permit Application No. 101224. Waste Mgmt. of Delaware Valley South, 408 S. Oak Ave., P. O. Box 427, Primos, PA 19108, Upper Darby Township, **Delaware County.** Application for a radiation protection action plan for a MSW transfer station. The application was received by the Southeast Regional Office on December 23, 2002.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit Application No. 101538. WSI—Sandy Run Landfill Inc., 995 Landfill Road, Hopewell, PA 16650, Broad Top, Hopewell, **Bedford County.** The application is for leachate recirculation for Sandy Run Landfill. The application was determined to be administrative complete by the Southcentral Regional Office on February 12, 2003.

Comments concerning the application should be directed to John Krueger, Program Manager, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Persons interested in obtaining more information about the general permit application may contact the Waste Management Program, (717) 705-4706. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Office identified in this notice. Persons interested in reviewing the application files should contact the appropriate Regional Office to schedule an appointment.

Persons wishing to receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the Department Regional Office within 30 days of the date of this notice and must file protests or comments on

a Proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts, which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office identified. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121–143, the Federal Clean Air Act and regulations adopted under the Act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejksznar, Acting New Source Review Chief, (570) 826-2531.

39-399-057: GEO Specialty Chemicals (Trimet Products Group) (2409 North Cedar Crest Boulevard, Allentown, PA 18104) for installation of an air cleaning device to collect dust from the calcium formate plant which includes conveying, screening and packaging operations at the facility in South Whitehall Township, **Lehigh County.**

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

28-03044: Tarco Roofing Materials, Inc. (8650 Molly Pitcher Highway North, Antrim, PA 17225) for construction of an asphalt coater and associated storage tanks in Antrim Township, **Franklin County.** This construction is subject to 40 CFR Part 60, Subpart UU—Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture and Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

59-00002A: Dominion Transmission, Inc. (625 Liberty Avenue, Pittsburgh, PA 15222) for the modification of two 4,200 horsepower natural gas-fired reciprocating internal combustion compressor engines at the Tioga Compressor Station in Farmington Township, **Tioga County.** The proposed modification is an increase of 65 tons for a 12 consecutive month period in the amount of CO which the engines would be allowed to emit.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.

65-00693A: USA Valley Facility, Inc. (R. D. 2, Box 282A, Irwin, PA 15642) for replacement installation of a ground flare at their facility in Penn Township, **Westmoreland County**.

65-00853A: Koppers Industries, Inc. (436 Seventh Avenue, Pittsburgh, PA 15219) for installation of Boilers, Battery 1B, 2, Coke Pushing, Flares at Monessen Coke Plant in Monessen, **Westmoreland County**.

04-00706B: Beaver Valley Slag, Inc. (1150 Brodhead Road, Monaca, PA 15061) for installation of a screening plant at Black's Run Slag Mine in Center Township, **Beaver County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Devendra Verma, New Source Review Chief, (814) 332-6940.

10-335B: Penn United Carbide, A Division of Penn United Technology, Inc. (196 Alwine Road, Saxonburg, PA 16056) for construction of a silicon carbide powder manufacturing and carbide tooling production facility in Saxonburg, **Butler County**.

33-0147A: Dominion Transmission, Inc.—Big Run Compressor Station (Bowers Road, Big Run, PA 15715) for replacement of existing IR engine with new CAT clean burn engine and installation of a dehydration system in Gaskill Township, **Jefferson County**.

10-079C: BNZ Materials, Inc. (191 Front Street, Zelienople, PA 16063), for modification of kiln no. 1 to support plans to produce two new types of cast insulating fire brick in Zelienople Borough, **Butler County**. This is a Title V facility.

25-883A: Millcreek Township (3608 West 26th St., Erie, PA 16506) for modification of existing permit to increase the production rate from 80 tons per hour to 120 tons per hour at the Drum Mix Asphalt Plant in Millcreek Township, **Erie County**.

24-009C: Weyerhaeuser Co.—Johnsonburg Mill (100 Center Street, Johnsonburg, PA 15845) for installation of a wet scrubber on each Pulverized Coal Boiler (Units 040 and 041) for control of SO₂ emissions at the Weyerhaeuser-Johnsonburg Mill in the borough of Johnsonburg, **Elk County**. Weyerhaeuser Company-Johnsonburg Mill is a Title V facility.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

09-0027C: Fres-co System USA, Inc. (3005 State Road, Telford, PA 18969) for installation of a rubber roller resurfacing lathe with the associated cyclone and baghouse at the Fres-co industrial printing/manufacturing facility in West Rockhill Township, **Bucks County**. The installation of a rubber roller resurfacing lathe with the associated cyclone and baghouse will result in the emissions of 0.022 ton per year of particulate matter. The Plan Approval and Operating Permit will

contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

06-03097: Kore-Mart LTD (P. O. Box 175, Hamburg, PA 19526) for construction of a core sand reclaim unit controlled by a fabric collector in Borough of Hamburg, **Berks County**. The facility is a non-Title V (State-only) facility. This construction will result in a potential emission of 2.6 tpy of particulate. The approval will include monitoring, work practices, recordkeeping and reporting requirements designed to keep the source operating within all applicable air quality requirements.

36-03034A: Purina Mills, Inc. (3029 Hempland Road, Lancaster, PA 17601) for construction of a new pellet mill controlled by a high-efficiency cyclone at the animal feed mill in East Hempfield Township, **Lancaster County**. The facility is a non-Title V (State-only) facility. This construction will result in an estimated 4.68 tpy of particulate. The approval will include monitoring, work practices, recordkeeping and reporting requirements designed to keep the source operating within all applicable air quality requirements.

38-05023B: Pennsy Supply, Inc. (1001 Paxton Street, P. O. Box 3331, Harrisburg, PA 17105) for construction of a shredder for shredding unused and rejected shingles at the Prescott Quarry in South Lebanon Township, **Lebanon County**. This plan approval will be incorporated into the facility's current application for a State-only operating permit and will include appropriate requirements designed to keep the source operating within all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

41-310-012: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) for construction of a stone crushing plant containing various pieces of sand-stone crushing, screening, conveying, and the like, equipment at the Hagerman's Run (Plant 12) site in Armstrong Township, **Lycoming County**.

Some of the stone crushing, screening, conveying, and the like, equipment for which plan approval has been requested was previously constructed and operated under the "General Plan Approval and General Operating Permit for Portable Nonmetallic Mineral Processing Plants (BAQ-PGPA/GP-3)" but is no longer eligible to operate under this general plan approval and operating permit. The remainder of the equipment for which plan approval has been requested will be new to the site. The particulate matter emissions (including PM₁₀) from this equipment will be controlled by two fabric collectors and a water spray dust suppression system. The particulate matter emissions (including PM₁₀) from the use of plant roadways will be controlled by a water truck and a truck wash station. The applicant projects that the resultant PM₁₀ emissions will be up to 99.53 tons per year, most of which would occur as a result of truck traffic on plant roadways.

The Department's review of the information contained in the application indicates that the respective stone crushing plant will comply with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology requirements of 25 Pa. Code

§§ 127.1 and 127.12 and the requirements of Subpart 000 of the Federal Standards of Performance for New Stationary Sources (Standards of Performance for Nonmetallic Mineral Processing Plants). Based on this finding, the Department intends to approve the application and issue plan approval for the construction of the respective plant.

The following is a summary of the conditions the Department proposes to place in the plan approval to ensure compliance with all applicable regulatory requirements:

1. The air contaminant emissions from the crushing, screening, conveying, and the like, equipment shall be controlled by two fabric collectors and a water spray dust suppression system.
2. The crushing, screening, conveying, and the like, equipment shall not operate if the fabric collectors and water spray dust suppression system are inoperable.
3. The fabric collectors shall not emit particulate matter in excess of .02 grain per dry standard cubic foot.
4. The fabric collector shall be equipped with instrumentation to continuously monitor the pressure differential across the collectors and the associated air compressors shall be equipped with an air dryer and oil trap. Spare fabric collector bags shall also be kept on hand.
5. The water spray dust suppression system shall be connected to on-demand water source capable of delivering an adequate supply of water at any time.
6. A water truck shall be kept onsite and used, as needed, for the control of fugitive dust from plant roadways, stockpile areas, and the like.
7. All trucks exiting the facility shall pass through a truck wash station to remove dirt and mud from truck tires, undercarriages, and the like.
8. All trucks loaded from the facility's mineral filler storage silo shall be enclosed.
9. This plan approval does not authorize the construction, installation or operation of any generators, engines or engine/generator sets.
10. The facility shall not process more than 2,076,250 tons of stone per year nor shall the secondary crushing portion of the facility operate more than 3,218.19 hours per year.
11. Records shall be maintained of the tons of stone processed by the facility each month as well as the hours the secondary crushing portion of the facility operates each month. All records shall be retained for at least 5 years and shall be made available to the Department upon request.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

46-00198: Blommer Chocolate Co. (1101 Blommer Drive, East Greenville, PA 18041). The Title V Operating Permit has been revised to address changes in permit contact, changes to the pressure drop ranges through the baghouses to match manufacturer's specifications,

changes to the flow rate through the scrubber to match manufacturer's specifications and correcting site inventory mapping for sources at the facility in Upper Hanover Township, **Montgomery County**. The revisions to the Title V Operating Permit were made under 25 Pa. Code § 127.450. The changes made to the permit do not result in an increase of emissions.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

67-05043: Crown Cork and Seal, Inc. (One Crown Way, Philadelphia, PA 19154) for manufacturing of three piece containers in Penn Township, **York County**. The facility is a major emitter of VOCs and the HAP, glycol ether, which are primarily emitted by the can coating operations at the facility. The Title V operating permit will contain appropriate monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. This is a renewal of their Title V operating permit.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Program Manager, (570) 327-0512.

49-00004: Resilite Sports Products, Inc. (P. O. Box 764, Sunbury, PA 17801) for renewal of the Title V operating permit for their athletic mat manufacturing facility in Point Township, **Northumberland County**. The facility is currently operating under TVOP 49-00004, which was issued January 16, 1998. The facility's sources include one no. 2 fuel oil fired boiler, mat finish and cure operations, adhesive application operations, a ground water remediation system, spray equipment cleanup operations and a storage tank, which have the potential to emit major quantities of VOCs and HAPs. The facility has the potential to emit NOx, CO, PM10 and SOx below the major emission thresholds. The facility is subject to all applicable regulatory requirements of Reasonably Available Control Technology. The proposed Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

46-00059: Handelok Bag Co. (701A West Fifth Street, Lansdale, PA 19446) for operation of seven flexographic printing presses at Handelok's facility in the Borough of Lansdale, **Montgomery County**. The facility is a nonmajor facility. The seven flexographic printing presses will emit 17.6 tons of VOCs per year. The Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

23-00069: E I Dupont De Nemours and Co. (500 South Ridgeway Avenue, Glenolden, PA 19036) for operation of their pharmaceutical site in Glenolden Borough, **Delaware County**. The permit is for a non-Title V (State-only) facility. Major sources of air emissions include three boilers. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

09-00120: Degussa Construction Chemical Operation, Inc. (Route 113 and Beaver Dam Rd., Bristol, PA 19007) for operation of their cement and paint manufacturing site in the Bristol Township, **Bucks County**. The permit is for a non-Title V (State-only) facility. Major sources of air emissions include four paint/cement mixing and packaging lines and one baghouse. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

46-00138: Hopewell Veterinary Hospital (640 North Cedar Road, Jenkintown, PA 19046) for operation of their veterinary clinic/hospital in Abington Township, **Montgomery County**. The permit is for a non-Title V (State-only) facility. The facility's main source is a Type 4 Pathological Waste Incinerator. This Natural Minor facility does not have the potential to emit any criteria pollutant emissions greater than 24.9 tpy. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Saffko, Facilities Permitting Chief, (570) 826-2531.

48-303-006A: ABE Materials (Easton Division of Haines and Kibblehouse, P.O. Box 196, Skippack, PA 19474) for operation of a batch asphalt plant and associated air cleaning device at the Easton Asphalt Plant at 5137 Lower Mud Run Road, Lower Mount Bethel Township, **Northampton County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.

55-00003: Susquehanna University (514 University Avenue, Selinsgrove, PA 17870-1075), for their university campus in Selinsgrove Borough, **Snyder County**. The facility's main sources include 2 bituminous coal fired boilers, a natural gas/no. 2 fuel oil fired boiler, 11 smaller natural gas fired furnaces, 19 smaller no. 2 fuel oil fired furnaces, 6 natural gas fired emergency generators, 3 propane fired emergency generators and 2 parts cleaning stations. These sources have the potential to emit major quantities of SO_x and PM₁₀. The facility has taken restrictions to limit SO_x and PM₁₀ emissions below the major emission thresholds. The facility has the potential to emit VOCs, NO_x, CO and HAPs below the major emission thresholds. The proposed State-only (Synthetic Minor) operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

55-00004: The Colonial Furniture Co. (P.O. Box 117, Freeburg, PA 17827-0117), for their wood furniture manufacturing facility in Freeburg Borough, **Snyder County**. The facility's main sources include four no. 2 fuel oil fired boilers, six coating spray booths and wood-working operations. These sources have the potential to emit major quantities of VOCs and HAPs. The facility has taken restrictions to limit VOC and HAP emissions below the major emission thresholds. The facility has the potential to emit PM₁₀, NO_x, CO and SO_x below the major emission thresholds. The proposed State-only (Synthetic Minor) operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

10-00309: Heckett Multiserv, Plant Number 16 (Route 8 South, Butler, PA 16001) for a Natural Minor Permit to operate a slag processing plant in Butler, **Butler County**.

33-00016: PW Hardwood, LLC (11424 Route 36, Brookville, PA 15825) for a Natural Minor Permit to operate a sawmill, planing equipment and drying kilns in Oliver Township, **Jefferson County**.

61-00185: Heath Oil Co. (5609 State Road, Route 8, R.D. 1, Harrisville, PA 16038) for a Natural Minor Permit to operate a petroleum product distillation facility in the Borough of Barkeyville, **Venango County**.

37-00261: Hickman Williams and Co. (Route 18, Wampum Industrial Park, Wampum, PA 16157) for a Natural Minor Permit to operate metallurgical coke packaging facility in New Beaver Borough, **Lawrence County**.

25-00892: Norse Pipeline, LLC—Union City Compressor Station (Route 178, Union City, PA 16438) for operation of three internal combustion compressor engines and associated equipment in Union Township, **Erie County**.

25-00928: Zurn Industries, Inc.—Specification Drainage Operations (1801 Pittsburgh Avenue, Erie, PA 16514) for operation of their surface coating facility in the City of Erie, **Erie County**.

10-00303: C.U.E., Inc. (11 Leonberg Road, Cranberry Township, PA 16066) for a Synthetic Minor Operating Permit to operate a polyurethane plastic casting facility in Cranberry Township, **Butler County**.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); and The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District Mining Office indicated before each application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition to the previous, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the previously-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

<i>Parameter</i>	<i>30-day Average</i>
Iron (total)	3.0 mg/l
Manganese (total)	2.0 mg/l
Suspended solids pH*	35 mg/l
Alkalinity greater than acidity*	

*The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas, active areas disturbed by coal refuse disposal activities and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

40733203T2. HUD, Inc. t/a Emerald Anthracite II (P. O. Box 27, 200 East Front Street, Nanticoke, PA 18634), transfer of an existing coal refuse reprocessing operation from UGI Development Company in Hanover Township, **Luzerne County** affecting 38.8 acres, receiving stream: none. Application received February 3, 2003.

Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209.

17860123 and NPDES Permit No. PA0115436. Hepburnia Coal Company, P. O. Box I, Grampian, PA 16838. Revision to an existing bituminous surface mine permit for a Change in Permit Acreage from 286.0 to 291.0 acres. The permit is located in Knox-Ferguson-Jordan Townships, **Clearfield County**. Receiving streams: unnamed tributaries to Carson Run (CWF); unnamed tributaries to McNeel Run, (CWF). Application received January 23, 2003.

17930115 and NPDES Permit No. PA0219568. River Hill Coal Co., Inc., P. O. Box 141, Kylertown, PA 16847. Transfer of an existing bituminous surface mine-auger permit from K & J Coal Co., Inc. This permit is located in Chest Township, **Clearfield County** and affects 118 acres. Receiving streams: unnamed tributary to Wilson Run, unnamed tributary to Chest Creek (CWF). Application received January 31, 2003.

17960121 and NPDES Permit No. PA0220485. River Hill Coal Co., Inc., P. O. Box 141, Kylertown, PA

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Received

Effluent Limits—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
6.0 mg/l	7.0 mg/l
4.0 mg/l	5.0 mg/l
70 mg/l	90 mg/l
greater than 6.0; less than 9.0	

16847. Transfer of an existing bituminous surface mine-auger permit from K & J Coal Co., Inc. This permit is located in Chest and Ferguson Townships, **Clearfield County** and affects 297.5 acres. Receiving streams: unnamed tributary to Wilson Run, McMasters Run (CWF). Application received January 31, 2003.

17020103 and NPDES Permit No. PA0243221. River Hill Coal Co., Inc., P. O. Box 141, Kylertown, PA 16847. Transfer of an existing bituminous surface mine-auger permit application from K & J Coal Co., Inc. This permit application is located in Chest and Ferguson Townships, **Clearfield County** and affects 161 acres. Receiving streams: unnamed tributary to Wilson Run, unnamed tributary to Chest Creek (CWF). Application received January 31, 2003.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931.

56970105 and NPDES Permit No. PA0234630. Sherpa Mining Contractors, Inc., P. O. Box 4459, 1738 Snowfield Drive, Hidden Valley, PA 15502, permit transfer from Cooney Brothers Coal Company, P. O. Box 246, Cresson, PA 16630 and continued operation of a bituminous surface mine in Paint Township, **Somerset County**, affecting 171.0 acres. Receiving streams: unnamed tributary to/and Stonycreek River (CWF). The first downstream potable water supply intake from the point of discharge is the Cambria Somerset Authority Stonycreek Surface Water Intake. Application received February 6, 2003.

56950111 and NPDES Permit No. PA0213225. Sherpa Mining Contractors, Inc., P. O. Box 4459, 1738 Snowfield Drive, Hidden Valley, PA 15502, permit transfer from Cooney Brothers Coal Company, P. O. Box 246, Cresson, PA 16630 and for continued operation of a bituminous surface and auger mine in Shade Township, **Somerset County**, affecting 248.5 acres. Receiving streams: unnamed tributary to Shade Creek and Shade

Creek (CWF). The first downstream potable water supply intake from the point of discharge is the Cambria Somerset Authority Stonycreek Surface Water Intake. Application received February 6, 2003.

56970104 and NPDES Permit No. PA0234541. Sherpa Mining Contractors, Inc., P. O. Box 4459, 1738 Snowfield Drive, Hidden Valley, PA 15502, permit transfer from Heritage Mining Company, P. O. Box 126, Cresson, PA 16630 and for continued operation of a bituminous surface mine in Shade Township, **Somerset County**, affecting 86.4 acres. Receiving streams: unnamed tributaries to Stonycreek River (CWF). The first downstream potable water supply intake from the point of discharge is the Cambria Somerset Authority Stonycreek Surface Water Intake. Application received February 6, 2003.

11030201 and NPDES Permit No. PA0249394. Alpine Coal Company, Inc., 3920 Market Street, Camp Hill, PA 17011, commencement, operation and restoration of a bituminous coal refuse reprocessing mine in Barr Township, **Cambria County**, affecting 41.6 acres. Receiving streams: Moss Creek (CWF). There are no potable water supply intakes within 10 miles downstream. Application received February 6, 2003.

56880103 and NPDES Permit No. PA0598143. Future Industries, Inc., P. O. Box 157, Meyersdale, PA 15552, permit renewal and for continued operation of a bituminous surface mine and for discharge of treated mine drainage in Summit Township, **Somerset County**, affecting 785.0 acres. Receiving streams: unnamed tributary to Casselman River, the Casselman River, two unnamed tributaries to Lick Run, Lick Run, two unnamed tributaries to Bigby Creek and one unnamed tributary to Cranberry Run (CWF). There are no potable water supply intakes within 10 miles downstream. Application received February 4, 2003.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669.

33030101 and NPDES Permit No. PA0242292. Strishock Coal Company (220 Hillcrest Drive, DuBois, PA 15801). Commencement, operation and restoration of a bituminous surface strip operation in Washington Township, **Jefferson County** affecting 108.0 acres. Receiving

streams: two unnamed tributaries to Horm Run and Horm Run (CWF). There are no potable surface water supply intakes within 10 miles downstream. Application to include a landuse change from forestland to cropland on the Warren E. Vivian property. Application received February 5, 2003.

1229-33030101-E-1. Strishock Coal Company (220 Hillcrest Drive, DuBois, PA 15801). Application for a stream encroachment to construct and maintain support facilities within 100 feet of unnamed tributary no. 2 to Horm Run in Washington Township, **Jefferson County** affecting 108.0 acres. Receiving streams: Two unnamed tributaries to Horm Run and Horm Run (CWF). There are no potable surface water supply intakes within 10 miles downstream. Application received February 5, 2003.

24030101 and NPDES Permit No. PA0242306. Tamburlin Brothers Coal Co., Inc. (P. O. Box 1419, Clearfield, PA 16830). Commencement, operation and restoration of a bituminous surface strip operation in Horton Township, **Elk County** affecting 53.2 acres. Receiving streams: Little Toby Creek (CWF). There are no potable surface water supply intakes within 10 miles downstream. Application received February 6, 2003.

Coal Applications Returned

1475-10020104-E-3. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Application for a stream encroachment to mine through and replace a section of unnamed tributary No. 4 to Findlay Run. This section is located from a point approximately 150 feet upstream from the confluence with Findlay Run then continuing upstream a distance of approximately 900 feet in Clay Township, **Butler County** affecting 535.0 acres. Receiving streams: unnamed tributary to Findlay Run. Application received October 4, 2002. Application returned: February 6, 2003.

Noncoal Applications Received

Effluent Limits—The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	

*The parameter is applicable at all times

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

28840302C3 and NPDES Permit PA0614289. Valley Quarries, Inc. (P. O. Box J, Chambersburg, PA 17201), renewal of existing discharge of treated mine drainage in Greene Township, **Franklin County**. Receiving stream:

Conococheague Creek (CWF). There are no existing downstream potable water supply intakes within 10 miles of the discharge points. Application received February 3, 2003.

Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209.

14030801. Donn G. Fetterolf, 126 Red Power Drive, Aaronsburg, PA 16820. Commencement, operation and restoration of a Small Industrial Minerals (Shale) permit in Haines Township, **Centre County** affecting 1 acre. Receiving streams: unnamed intermittent tributary, tributary to Pine Creek. Application received January 22, 2003.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931.

Large Industrial Minerals Applications Returned

32010301, John P. Shawley (R. R. 1, Box 93A, Saltsburg, PA 15681-9505), commencement, operation and restoration of bituminous surface mine in Conemaugh Township, **Indiana County**, affecting 85.4 acres, receiving stream unnamed tributary to Big Run (CWF) to Blacklegs Creek (CWF) and Sulphur Run (CWF) to Kiskiminetas River. Application received January 10, 2001. Application returned: January 29, 2003.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669.

20030301, Lakeland Sand & Gravel, Inc. (7013 Atlantic Lake Road, Hartstown, PA 16131). Commencement, operation and restoration of a sand and gravel operation in Sadsbury Township, **Crawford County** affecting 81.0 acres. Receiving streams: Conneaut Outlet (WWF). There are no potable surface water supply intakes within 10 miles downstream. Application received February 6, 2003.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications and requests for Environmental Assessment approval and requests for Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341(a)) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Initial requests for 401 Water Quality Certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Permit or Water Obstruction and Encroachment Permit, or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between of 8 a.m. and 4 p.m. on each working day at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

E08-398, Wysox Creek Watershed Association, P. O. Box 174, Rome, PA 18834-9711. Watershed Restoration Project, in Orwell Township, **Bradford County**, ACOE Baltimore District (LeRaysville, PA Quadrangle N: 20.2 inches; W: 15.7 inches).

The application proposes to construct, operate and maintain a stream bank stabilization project on Johnson Creek and Beaver Creek (tributary to Johnson Creek), both of which are designated as CWF. The project intends to use rock vane structures, riprap bank stabilization, channel realignment and vegetation to achieve the stabilization. The constructed project length extends 2,100 linear feet in both watersheds with an increase in-stream length of approximately 200 linear feet. An additional 0.17 acre of wetland will be permanently impacted as a result of completing this project.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E65-819, Norwin Public Library, 299 Third Street, Irwin, PA 15642. Irwin Borough, **Westmoreland County**, ACOE Pittsburgh District.

To place and maintain fill in 0.02 acre of wetland and along the right bank of an unnamed tributary to Tinkers Run (TSF) and to construct and maintain a 50-foot long, 5-foot high wall and stream bank protection and two outfall structures at the right bank of said stream for the purpose of construction of a library and parking facilities. The project is located along the west side of Caruthers Lane approximately 0.2 mile south of SR 30 (Irwin, PA Quadrangle N: 13.8 inches; W: 10.42 inches).

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E20-523, Howard E. Fisher, 680 Cliff Mine Road, Coraopolis, PA 15108. Howard E. Fisher Solid Fill Dock, in Sadsbury Township, **Crawford County**, ACOE Pittsburgh District (Conneaut Lake, PA Quadrangle N: 21.0 inches; W: 8.1 inches).

To repair and maintain an existing 10.5-foot wide solid fill dock extending approximately 52.5 feet into the west side of Conneaut Lake at 11018 Aldina Drive approximately 0.8 mile north of SR 322. Work completed prior to obtaining this permit consisted of replacing the deteriorated wood perimeter with new plywood and posts.

E37-148, City of New Castle, 230 N. Jefferson Street, New Castle, PA 16101, West Bank Interceptor and Trunk Line Sewer System Project, in City of New Castle, **Lawrence County**, ACOE Pittsburgh District (New Castle North, New Castle South and Bessemer).

The purpose of the application is to construct a new sewer interceptor system along the western bank of the Shenango River (WWF) between Grant Street and the New Castle Wastewater Treatment Plant. The sewer will begin at Grant Street near the existing grant street bridge. The sewer will follow the former New Castle and Beaver Valley Railroad for approximately 3 miles south to

the Pittsburgh and Lake Erie overpass, at which point the sewer will diverge from the railroad and enter into the City of New Castle at S. Wayne Street. The alignment will remain in S. Wayne Street down to an existing 48-inch storm sewer crossing under the railroad. This railroad crossing will be rehabilitated and utilized to convey the flow to the wastewater treatment plant adjacent to SR 0018 (Montgomery Avenue).

The project will involve the replacement of four stormwater outfalls to the Shenango River (drop inlet 1—24 inch diameter pipe, drop inlet 2—36 inch diameter pipe, drop inlets 3 and 4—12 inch diameter pipe) and a 24 inch pipe diameter stormwater outfall will be constructed to the Mahoning River (WWF). Portions of the project are located in the 100-year floodplain of the Shenango and Mahoning Rivers.

E62-352A, Kinzua Warren Joint Authority, Mead Township Building, Mead Blvd., P. O. Box 412, Clarendon, PA 16313, Kinzua-Warren Phase II Sewer Project, in Mead and Pleasant Townships, **Warren County**, ACOE Pittsburgh District (Clarendon, Sheffield and Warren).

The purpose of the application is to provide public sewage service to 290 units in 6 areas of Mead and Pleasant Townships, Warren County. The total project area is 500 acres, with 37 disposed acres. Approximately 80,000 linear feet of low-pressure sewer line and a pump station will be constructed.

The project will have the following temporary impacts: three wetland crossings of PEM wetland.

Seven stream crossings of unnamed tributaries to the Allegheny River (CWF) at the following locations:

<i>Latitude</i>	<i>Longitude</i>
41°49'55.0"	79°4'32.8"
41°49'55.6"	79°4'32.9"
41°50'7.9"	79°4'18.87"
41°50'8.3"	79°4'18.5"
41°50'14.5"	79°4'14.77"
41°47'25.6"	79°4'7.82"
41°49'55.6"	79°4'32.9"

Two Crossings of Dutchman Run (HQ-CWF)

<i>Latitude</i>	<i>Longitude</i>
41°47'44.3"	79°5'28"
41°47'38.6"	79°5'20.3"

One Crossing of Farnsworth Branch (HW-CWF)

<i>Latitude</i>	<i>Longitude</i>
41°45'6.6"	79°7'28.7"

Two Crossings of W. Branch Tionesta Creek

<i>Latitude</i>	<i>Longitude</i>
41°46'18.2"	79°6'6.9"
41°45'34"	79°10'12"

Three Crossings of unnamed tributaries to Six Mile Run (HQ-CWF)

<i>Latitude</i>	<i>Longitude</i>
41°45'1.9"	79°3'42.5"
41°45'47.3"	79°2'8.8"
41°45'28.1"	79°3'10.8"

Four Crossings to Six Mile Run (HQ-CWF)

<i>Latitude</i>	<i>Longitude</i>
41°45'44.2"	79°2'55.3"
41°45'48.2"	79°2'28.5"

<i>Latitude</i>	<i>Longitude</i>
41°45'50.1"	79°2'11.2"
41°45'28.1"	79°3'10.8"

Three Crossings to unnamed tributaries of W. Branch Tionesta Creek (HQ-CWF)

<i>Latitude</i>	<i>Longitude</i>
41°46'10.1"	79°8'50.3"
41°46'28.2"	79°7'56.0"
41°45'34"	79°10'12"

One Crossing to Elkhorn Run (HQ-CWF)

<i>Latitude</i>	<i>Longitude</i>
41°44'34.8"	79°10'12.1"

One Crossing to Mead Run (HQ-CWF)

<i>Latitude</i>	<i>Longitude</i>
41°46'4.8"	79°41'9'31.4"

Replace the existing single span steel stringer bridge that carries T-374 (Morris Road) over Licking Creek (CWF). The existing structure has an overall length of approximately 17.05 meters, a clear span of 15.9 meters and an underclearance of 2.78 meters. This will be replaced with a composite steel I-beam bridge having a clear span of 19.8 meters and an underclearance of 3.626 meters. The new bridge will be shifted downstream approximately 9.5 meters. The project will also impact 0.03 acre of PEM wetland to accommodate the shift of the bridge location and widening of T-374.

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

D06-446EA. Womelsdorf-Robeson Joint Authority, P. O. Box 94, Womelsdorf, PA 19567. Heidelberg Township, **Berks County**. ACOE Philadelphia District.

Project proposes to breach Furnace Creek Dam across Furnace Creek (HQ-CWF, MF), restore the stream within the reservoir and relocate/restore the stream below the dam to its historic location for the purpose of eliminating a public safety hazard and restore the stream to a free flowing condition. The dam is located approximately 4,700 feet southwest of the intersection of Furnace Street (T493) and T368 (Womelsdorf, PA Quadrangle N: 14.5 inches; W: 3.2 inches).

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D26-115. Arnold and Gloria Burchianti, 150 Church Street, Smithfield, PA 15478. To modify, operate and maintain Burchianti Dam across a tributary to York Run (WWF), directly and indirectly impacting approximately 270 feet of stream channel for the purpose of recreation (Smithfield, PA Quadrangle N: 12.35 inches; W: 9.5 inches) in Nicholson Township, **Fayette County**.

ACTIONS

FINAL ACTIONS TAKEN UNDER THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT—NPDES AND WQM PART II PERMITS

INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

The Department of Environmental Protection has taken the following actions on previously received permit applications and requests for plan approval.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. Municipal and Industrial Permit Actions under The Clean Streams Law (35 P. S. §§ 691.1— 691.1001).

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

NPDES Permit No. PA0050202, Industrial Waste, **National Railroad Passenger Corporation**, 30th Street Station, 30th and Market Streets, Philadelphia, PA. This proposed facility is located in City of Philadelphia, **Philadelphia County**.

Description of Proposed Action/Activity: Renewal to discharge into Schuylkill River/3F Watershed.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

NPDES Permit No. PA0062944, Sewage, **Robert Barker**, 618 Quaker Plain Road, Bangor, PA 18013. This proposed facility is located in Upper Mount Bethel Township, **Northampton County** and discharges to an unnamed tributary to Martins Creek.

Description of Proposed Action/Activity: Renewal of NPDES permit.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

NPDES Permit No. PA0033057, Sewage, **Crestview Village Mobile Home Park**, 455B Middlecreek Road, Lititz, PA 17543. This proposed facility is located in Londonderry Township, **Dauphin County**.

Description of Proposed Action/Activity: Authorization to discharge to Iron Run in Watershed 7-D.

NPDES Permit No. PA0082490 and WQM Permit No. 568S039, Amendment, Sewage, **The Pike Restaurant and Lounge**, 985 Baltimore Pike, Gettysburg, PA 17325. This proposed facility is located in Cumberland Township, **Adams County**.

Description of Proposed Action/Activity: Transfer of Permits.

NPDES Permit No. PA0083674 and WQM Permit No. 0192403, Amendment, Sewage, **Rainworth, Inc.**, 1979 Biglerville Road, Gettysburg, PA 17325. This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Transfer of Permits for the "former" Lincoln Logs Restaurant.

WQM Permit No. 2102409, Sewerage, **Michael and Gayniale Nowak**, 299 Springfield Road, Shippensburg, PA 17257. This proposed facility is located in Upper Mifflin Township, **Cumberland County**.

Description of Proposed Action/Activity: Construction of a small flow treatment facility consisting of septic tank, dosing tank, sand filter and tablet chlorination with contact tank.

NPDES Permit No. PAG123569, CAFO, **John Huber**, 22 West Mill Port Road, Lititz, PA 17543. This proposed facility is located in Northeast Madison Township, **Perry County**.

Description of Proposed Action/Activity: Authorization for operation of a 768-AEU finishing hog CAFO in Watershed 7-A.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES Permit No. PA0003107, Industrial Waste, **Anchor Glass Container Corporation**, P. O. Box 30182, Tampa, FL 33630-3182 is authorized to discharge from a facility located at Anchor Glass Plant, South Connellsville, **Fayette County** to receiving waters named Youghiogheny River.

NPDES Permit No. PA0097276, Industrial Waste, **Fairchance Borough Council**, 125 West Church Street, Fairchance, PA 15436 is authorized to discharge from a facility located at Fairchance Borough Water Treatment Plant, Georges Township, **Fayette County** to receiving waters named Cave Hollow Creek.

NPDES Permit No. PA0026841-A2, Sewage, **Borough of Oakmont**, Fifth Street and Virginia Avenue, P. O. Box 206, Oakmont, PA 15139-0206 is authorized to discharge from a facility located at Oakmont Wastewater Treatment Plant, Oakmont Borough, **Allegheny County** to receiving waters named Allegheny River.

NPDES Permit No. PA0027243, Sewage, **North Huntingdon Township Municipal Authority**, 11265 Center Highway, North Huntingdon, PA 15642-2018 is authorized to discharge from a facility located at

Youghiogheny STP, North Huntingdon Township, **Westmoreland County** to receiving waters named Youghiogheny River.

NPDES Permit No. PA0032174, Sewage, **Frank Perano, GSP Management Company**, P. O. Box 677, Morgantown, PA 19543 is authorized to discharge from a facility located at Interstate Mobile Village STP, Donegal Township, **Washington County** to receiving waters named unnamed tributary of Bonar Creek.

NPDES Permit No. PA0090786, Sewage, **Hempfield Township Supervisors**, R. D. 9, Box 427, Greensburg, PA 15601 is authorized to discharge from a facility located at Hempfield Park STP, Hempfield Township, **Westmoreland County** to receiving waters named unnamed tributary of Brush Creek.

NPDES Permit No. PA0096628, Sewage, **Hamill Manufacturing Company, Inc.**, 500 Pleasant Valley Road, Trafford, PA 15085 is authorized to discharge from

<i>Parameter</i>	<i>Avg. Mon.</i>	<i>Max. Daily</i>
Aluminum	2.1	4.2
Manganese	0.8	1.6
Total Iron	5.8	11.6

NPDES Permit No. PA0219321, Sewage, **Shanksville Borough**, P. O. Box 58, Shanksville, PA 15560-0058 is authorized to discharge from a facility located at the Shanksville Borough STP, Stonycreek Township, **Somerset County** to receiving waters named Stony Creek.

Permit No. 0202202, Industrial Waste, **Viacom, Inc.**, 11 Stanwix Street, Pittsburgh, PA 15222. Construction of groundwater treatment system—Lot No. 3 located in Trafford Borough, **Westmoreland County** to serve former Westinghouse Power Circuit Break Facility—Trafford Plant.

Permit No. 2602403, Sewerage, **Menallen Township Sewer Authority**, P. O. Box 576, New Salem, PA 15468. Construction of Rock Works Sewage Treatment Plant, five remote pump stations and gravity sewer collection system located in Menallen Township, **Fayette County** to serve Searights, Dearth, Rock Works, Balsinger, Haddenville, U. S. Route 40 and Menallen Township.

Permit No. 2602405, Sewerage, **Tim J. Piowar, Dunlap, Inc.**, 1310 Pittsburgh Road, P. O. Box 2092, Uniontown, PA 15401. Construction of small flow sewage treatment facility located in North Union Township, **Fayette County** to serve Arctic Cove Sewage Treatment Plant.

Permit No. 5602406, Sewerage, **Somerset Township Municipal Authority**, P. O. Box 247, Somerset, PA 15501. Construction of pump station and force main located in Somerset Township, **Somerset County** to serve Somerset Crossings.

Permit No. 5602409, Sewerage, **Timothy L. Woy**, P. O. Box 32, Jennerstown, PA 15547. Construction of a sewage treatment plant located in Jenner Township, **Somerset County** to serve the Timothy L. Woy single residence.

Permit No. 6301408, Sewerage, **West Alexander Borough Municipal Authority**, P. O. Box 299, West Alexander, PA 15376. Construction of sanitary sewer

a facility located at Hamill Manufacturing STP, Penn Township, **Westmoreland County** to receiving waters named Lyons Run.

NPDES Permit No. PA0097942, Sewage, **Dunlap, Inc.**, 1310 Pittsburgh Road, P. O. Box 2092, Uniontown, PA 15401 is authorized to discharge from a facility located at Arctic Cove Restaurant Site STP, North Union Township, **Fayette County** to receiving waters named Redstone Creek.

NPDES Permit No. PA0098761, Sewage, **NWL Company**, 1001 LaFayette Drive, Farmington, PA 15437 is authorized to discharge from a facility located at Nemaquin Woodlands Sewage Treatment Plant, Wharton Township, **Fayette County** to receiving waters named unnamed tributary of Deadman Run.

This notice reflects changes from the notice published at 32 Pa.B. 5677 (November 16, 2002).

<i>Avg. Mon.</i>	<i>Avg. Weekly</i>	<i>Max. Daily</i>	<i>Instantaneous Maximum</i>
0.5		1.0	1.25
0.2		0.4	0.5
1.4		2.8	3.5

system located in West Alexander Borough, **Washington County** to serve West Alexander.

Permit No. 6591410-A1, Sewage, **Westmoreland County Industrial Park Authority**, 2 North Main Street, Suite 601, Greensburg, PA 15601-2405. Construction of outfall sewer located in Upper Burrell Township, **Westmoreland County** to serve Written Hollow Outfall Sewer.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 2502428, Sewerage, **Freleigh's Whispering Pines Mobile Home Park**, 2158 Rice Avenue, Lake City, PA 16423. This proposed facility is located in Girard Township, **Erie County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a sewage treatment plant to serve an existing mobile home park.

WQM Permit No. 4202403, Sewerage, **Northwest Savings Bank**, 33 Main Street, Bradford, PA 16701. This proposed facility is located in Foster Township, **McKean County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a small flow treatment facility to serve a two apartment dwelling.

WQM Permit No. 2502413, Sewerage, **Borough of Girard**, 34 Main Street West, Girard, PA 16417. This proposed facility is located in Borough of Girard, **Erie County**.

Description of Proposed Action/Activity: This project is for the replacement of a gravity sewer line between Rice Avenue and the Girard Borough sewage treatment plant.

WQM Permit No. 2502424, Sewerage, **Maleno Developers, Inc.**, 2236 West 38th Street, Erie, PA 16506. This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a sewage lift station and force main proposed to service "The Meadows at Summit Development."

WQM Permit No. 2502408, Sewerage, **City of Erie**, 626 State Street, Room 504, Erie, PA 16501-1150. This proposed facility is located in City of Erie, **Erie County**.

Description of Proposed Action/Activity: This project is for the replacement of the Holland Street lift station and the installation of sanitary force main to service existing facilities and future development along the Erie bayfront.

WQM Permit No. 2502427, Sewerage, **Harborcreek Township Sewer Authority**, 5601 Buffalo Road, Harborcreek, PA 16421-1625. This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a sewage lift station and force main to serve an existing mobile home park.

WQM Permit No. 6203401, Sewerage, **Howard Hull**, 858 Nagle Road, Erie, PA 16511-2111. This proposed facility is located in Pittsfield Township, **Warren County**.

Description of Proposed Action/Activity: This project is for a single residence.

WQM Permit No. 6203403, Sewerage, **John J. Salapek**, 131 Scranton Hollow Road, Warren, PA 16365. This proposed facility is located in Farmington Township, **Warren County**.

Description of Proposed Action/Activity: This project is for a single residence.

WQM Permit No. 6203404, Sewerage, **Joseph N. Mangione**, 493 Quaker Hill Road, Warren, PA 16365. This proposed facility is located in Glade Township, **Warren County**.

Description of Proposed Action/Activity: This project is for a single residence.

NPDES STORMWATER INDIVIDUAL PERMITS—(PAS)

The following NPDES Individual Permits for Discharges of Stormwater Associated with Construction Activities have been issued.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

<i>NPDES Permit</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS101030	Johnstown Zambias, L. P. 300 Market Street Johnstown, PA 15901	Cambria County Richland Township	Sandy Run HQ-CWF

Northwest Region: Oil and Gas Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6860.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS102708	Pennsylvania General Energy Corporation 208 Liberty Street Warren, PA 16365	Forest	Jenks Township	Little Salmon Creek HQ-CWF

APPROVALS TO USE NPDES AND/OR OTHER GENERAL PERMITS

The following parties have submitted: (1) Notices of Intent for Coverage under (1) General NPDES Permits to Discharge Wastewater into the Waters of the Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations. Monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permits for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in this Commonwealth; (3) General NPDES Permit Authorizing the Discharge of Stormwater Associated with Construction Activities to Waters of the Commonwealth; (4) Notification for First Use Application of Sewage Sludge.

The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. The Department of Environmental Protection approves the following coverage under the specific General Permit.

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)

General Permit Type—PAG-2

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Upper Darby Township Delaware County	PAG2002303005	James Weiss 902 Old Eagle School Rd., Suite 965 Wayne, PA and Giant Food Stores P. O. Box 249 Carlisle, PA	Cobbs Creek WWF-MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Ridley Township Delaware County	PAG2002303003	Commerce Bank 1100 Atrium Way Mt. Laurel, NJ 08054	Crum Creek WWF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Upper Moreland Township Montgomery County	PAG2004603012	Patrick Deacon 2840 Limekiln Pike Glenside, PA 19038	Pennypack Creek TSF-M	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Lower Moreland Township Montgomery County	PAR10T910	Arcadia Land Company 100 West Lancaster Ave. Wayne, PA 19087	Pennypack Creek WF-M	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Horsham Township Montgomery County	PAG2004603015	Sam Braccia 715 Norristown Road Horsham, PA 19044	Little Neshaminy Creek WF-M	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Skippack Township Montgomery County	PAG2004603006	Charles Caikoski 2938 Woodlyn Avenue Fairview Village, PA 19409	Perkiomen Creek TSF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Hoffman Home Equestrian Center 815 Orphanage Road Littlestown, PA 17340 Mt. Joy Township	PAG2000103001	Fred Garmin P. O. Box 4777 Gettysburg, PA 17325	Lousy Run WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325-3404 (717) 334-0636
Spring Township Berks County	PAR10C452	Frederick Snow, Pres. Brandolini Co. 1301 Lancaster Ave. Berwyn, PA 19312	Municipal Storm Sewer CWF Secondary Water: Wyomissing Creek	Berks County Conservation District P. O. Box 520 1238 Co. Welfare Rd. Leesport, PA 19533-0520 (610) 372-4657
Spring Township Berks County	PAR10C456	Walter Greth Greth Dev. Group P. O. Box 305 Temple, PA 19560	Unnamed tributary/Cacoosing Creek Tributary/Tulpehocken Creek CWF	Berks County Conservation District P. O. Box 520 1238 Co. Welfare Rd. Leesport, PA 19533-0520 (610) 372-4657
Hampden Township	PAG2002103005	William Shrader 1149 Harrisburg Pike Carlisle, PA 17013	Cedar Run CWF	Cumberland County Conservation District (717) 240-7812
Greene Township	PAG2002803003	Beechwood Associates 20 East Burd Street Shippensburg, PA 17257	Conococheague Creek CWF	Franklin County Conservation District (717) 264-8074
Southampton Township	PAG2002803002	JED Martin Family L. P. 4961 Cumberland Highway Chambersburg, PA 17201	Middle Spring Creek CWF Furnace Run CWF	Franklin County Conservation District (717) 264-8074
Greene Township	PAG2002803001	Sheldon Starr Sycamore Meadows 798 Starr Ave. Chambersburg, PA 17201	Conococheague Creek CWF	Franklin County Conservation District (717) 264-8074
East Cocalico Township Lancaster County	PAG2003603002	Weaverland Menn Conference 633 Stricklertown Rd. Newmanstown, PA 17073	Little Cocalico Creek TSF	Lancaster County Conservation District 1383 Arcadia Rd., Rm. 6 Lancaster, PA 17601 (717) 299-5361
West Earl Township Lancaster County	PAG2003603010	Pleasant Valley Mennonite School 144 Pleasant Valley Rd. Ephrata, PA 17522	UNT Conestoga River WWF	Lancaster County Conservation District 1383 Arcadia Rd., Rm. 6 Lancaster, PA 17601 (717) 299-5361
East Lampeter Township Lancaster County	PAG2003603011	Witmer Fire Protective Assoc. 455 Mt. Sidney Rd. Lancaster, PA 17602	Stauffer Run WWF	Lancaster County Conservation District 1383 Arcadia Rd., Rm. 6 Lancaster, PA 17601 (717) 299-5361

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
East Earl Township Lancaster County	PAG2003603013	Linfred G. Sensenig 1018 Ranck Rd. New Holland, PA 17557	Mill Creek WWF	Lancaster County Conservation District 1383 Arcadia Rd., Rm. 6 Lancaster, PA 17601 (717) 299-5361
Ephrata Township Lancaster County	PAG2003603014	BGT Realty Co. 345 S. Reading Rd. Ephrata, PA 17527	UNT Cocalico Creek WWF	Lancaster County Conservation District 1383 Arcadia Rd., Rm. 6 Lancaster, PA 17601 (717) 299-5361
Manheim Township Lancaster County	PAG2003603015	Bond Collins Builders P. O. Box 146 Millersville, PA 17551	UNT Little Conestoga WWF	Lancaster County Conservation District 1383 Arcadia Rd., Rm. 6 Lancaster, PA 17601 (717) 299-5361
East Lampeter Township Lancaster County	PAG2003603016	High Properties 1853 William Penn Way Lancaster, PA 17605	UNT Big Conestoga WWF	Lancaster County Conservation District 1383 Arcadia Rd., Rm. 6 Lancaster, PA 17601 (717) 299-5361
Centre County Boggs Township	PAR10F173	Department of Transportation 1924-30 Daisy St. Clearfield, PA 16830	Bald Eagle Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817
Clinton County Woodward Township	PAR101905R	David T. Webb P. O. Box 907 Lock Haven, PA 17745	Reeds Run CWF	Clinton County Conservation District 216 Spring Run Rd. Rm. 104 Mill Hall, PA 17751-9543 (570) 726-3798, Ext. 5
Potter County Coudersport Borough	PAG2005303001	Coudersport Borough Authority 201 S. West St. Coudersport, PA 16915	Allegheny River CWF	Potter County Conservation District 107 Market St. Coudersport, PA 16915 (814) 274-8411, Ext. 4
Tioga County Jackson Township	PAG2045903003	Jackson Township Municipal Authority Leo Parchesky P. O. Box 61 Millerton, PA 16936	Hammond Creek CWF	Tioga County Conservation District 29 East Ave. Wellsboro, PA 16901 (570) 724-1801
Armstrong County Washington and Sugarcreek Townships	PAG2000B03001	Kittanning Suburban Joint Water Authority R. D. 1 Box 23 Adrian, PA 16210	Allegheny River WWF Huling Run TSF Limestone Run WWF	Armstrong County Conservation District (724) 548-3425
Washington County South Strabane Township	PAG2006303003	Edward Morascyzk 382 West Chestnut St. Washington, PA 15301	UNT to Chartiers Creek WWF	Washington County Conservation District (724) 228-6774
Washington County Peters Township	PAG2006303005	Donaldson's Crossroads Assoc. c/o Zamagias Properties 336 4th Avenue Pittsburgh, PA 15222	Chartiers Creek WWF	Washington County Conservation District (724) 228-6774
Erie County Fairview Township	PAG2002503004	Don Meyers 800 State Street Erie, PA 16501	Trout Run CWF; MF	Erie Conservation District (814) 825-6403

General Permit Type—PAG-3

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Luzerne County Berwick Township	PAR232213	Leggett & Platt 515 Salem Boulevard Berwick, PA 18603	Tributary to Susquehanna River CWF	DEP—NERO Water Management 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511
Johnstown City Cambria County	PAR806226	99th RSC 99 Soldiers Lane Coraopolis, PA 15108	UNT to Solomons Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
City of Bradford McKean County	PAR328303	Werzalit of America, Inc.	Tunungwant Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-4

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Cumberland County Lower Frankford Township	PAG043700	Shawn Snyder 501 Conodoguinet Avenue Carlisle, PA 17013	UNT Conodoguinet Creek WWF	DEP—SCRO 909 Elmerton Ave. Harrisburg, PA 17110 (717) 705-4707
Blair County Freedom Township	PAG043701	Michael Mahr, Jr. 217 E. Walnut Ave. Altoona, PA 16601	South Dry Run WWF	DEP—SCRO 909 Elmerton Ave. Harrisburg, PA 17110 (717) 705-4707
Jennner Township Somerset County	PAG046266	Timothy L. Woy P. O. Box 32 Jennerstown, PA 15547	UNT to Roaring Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Pittsfield Township Warren County	PAG048869	Howard Hull 858 Nagle Road Erie, PA 16511-2111	Miles Run	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Penn Township Butler County	PAG048514	Michael A. Traficante 6155 Penn Drive Butler, PA 16002	Unnamed tributary to Thorn Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Wolf Creek Township Mercer County	PAG048472	Cleveland Eddinger 148 Stoneboro Road Grove City, PA 16127	Unnamed tributary to Wolf Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Farmington Township Warren County	PAG048522	Martha L. Haner R. R. 4, Box 219 Rowley Road Sugar Grove, PA 16350	Unnamed tributary to Kiantone Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Farmington Township Warren County	PAG048872	John J. Salapek 131 Scranton Hollow Road Warren, PA 16365	Unnamed tributary to Mud Run	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Glade Township Warren County	PAG048873	Joseph N. Mangione 493 Quaker Hill Road Warren, PA 16365	Unnamed tributary to Conewango Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-5

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Bucks County Bristol Township	PAG050040	Getty Properties Corporation 125 Jericho Turnpike Suite 302 Jericho, NY 11753	Mill Creek-2E	Southeast Region Water Management (610) 832-6130

General Permit Type—PAG-9

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Contact Office and Telephone No.</i>
Plainfield Township Northampton County	PAG092209	Lawson Septic Service, Inc. 1261 Church Road Penn Argyl, PA 18072	NERO 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511

PUBLIC WATER SUPPLY PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Safe Drinking Water Act for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER**Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Permit No. 4503501, Public Water Supply.

Applicant	Stroudsburg Area School District 123 Linden Street Stroudsburg, PA 18360
Borough or Township	Hamilton Township
County	Schuylkill County
Type of Facility	Elementary School Corrosion Control Treatment
Consulting Engineer	Gregory Wilhelm, P. E. Walter B. Satterthwaite Associates, Inc. 720 Old Fernhill Road West Chester, PA 19380

Permit to Construct January 28, 2003
Issued

Operations Permit issued to **Whitehall Township Authority**, 1901 Schadt Avenue, Whitehall, PA 18052, PWS ID 3390081, Whitehall Township, **Lehigh County** on December 12, 2002, for the operation of facilities approved under Construction Permit Minor Amendment.

Operations Permit issued to **Francis Golomb t/a Pleasant View Mobile Home Park**, R. R. 1, Box 1495, Berwick, PA 18603, PWS ID 2400043, Salem Township, **Luzerne County** on January 7, 2003, for the operation of facilities approved under Construction Permit N/A.

Operations Permit issued to **Paradise Springs Vended Water System**, 7 Spruce Street, Pine Grove, PA 17963, PWS ID 3546484, Pine Grove Township, **Schuylkill County** on January 13, 2003, for the operation of facilities approved under Construction Permit 5400501.

Operations Permit issued to **Pellam Terrace Mobile Home Court**, Box 52, R. R. 1, Harvey's Lake, PA 18618, PWS ID 2400050, Dallas Township, **Luzerne County** on January 23, 2003, for the operation of facilities approved under Construction Permits 4089529 and 4089530.

Permit No. N/A, Minor Amendment. Public Water Supply.

Applicant	Eagle Springs, Inc. 88 West Donaldson Street Tremont, PA 17981
Borough or Township	Hegins Township
County	Schuylkill County
Type of Facility	Bulk Water Hauling
Consulting Engineer	Alfred Benesch & Company 400 One Norwegian Plaza Pottsville, PA 17901
Permit to Construct Issued	February 6, 2003

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 2102507 MA, Minor Amendment, Public Water Supply.

Applicant	Pennsylvania American Water Company
Municipality	Silver Spring Township
County	Cumberland
Type of Facility	Construction of new residual waste lagoons at Silver Spring filtration plant.
Consulting Engineer	Anthony J. Basile, P. E. American Water Works Service Company 1025 Laurel Oak Road Voorhees, NJ 08043
Permit to Construct Issued:	February 6, 2003

Permit No. 6702518, Public Water Supply.

Applicant	The York Water Company
Municipality	York Township
County	York

Type of Facility	PWS Construction Permit for the proposed Green Valley Road Booster Station. The station will include two 50 gpm pumps and one 400 gpm pump.
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Consulting Engineer	Jeffrey R. Hines, P. E. York Water Company 130 E. Market St. P. O. Box 15089 York, PA 17405-7089
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Permit to Construct Issued:	January 10, 2003
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Operations Permit issued to **United Mobile Homes, Inc.**, 3060043, Greenwich Township, **Berks County** on February 7, 2003, for the operation of facilities approved under Construction Permit No. 0601501.

Operations Permit issued to **Sparkeling Clear Water**, 7386514, North Londonderry Township, **Lebanon County** on February 4, 2003, for the operation of facilities approved under Construction Permit No. 3803501.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a).

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Glen Hope Borough	P. O. Box 112 Glen Hope, PA 16645	Clearfield

Plan Description: The approved plan provides for the relocation of the proposed sewage treatment plant approximately 850 feet to the northeast. Additionally the one pump station in this area will be eliminated and replaced with grinder pumps and pressure sewers. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES permits or WQM permits must be obtained in the name of the municipality or authority as appropriate.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Blair Township	575 Cedarcrest Drive Duncansville, PA 16635	Blair County

Plan Description: The approved plan provides for construction of approximately 1,200 linear feet of 8 inch sewer line on the south side of North Juniata Street to serve eight equivalent dwelling units currently utilizing onlot sewage systems. The sewage will be treated at the Hollidaysburg Borough Sewage Treatment Plant. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Caernarvon Township	P. O. Box 294 Morgantown, PA 19543	Berks County

Plan Description: The approved plan provides for the upgrade and expansion of the Caernarvon Township Municipal Sewer Authority wastewater treatment plant by the construction of a 0.7 MGD sequencing batch reactor process. The plan also provides for the extension of public sewers to the Hertzler Lane area and to the Inn at Morgantown/Heritage restaurant area as defined in the plan. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Spruce Hill Township	R. R. 2 Box 1105 Port Royal, PA 17082	Juniata County

Plan Description: The approved plan provides for the implementation of an onlot sewage disposal system management program that will require pumping and inspection of onlot sewage disposal systems on a scheduled basis. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Marietta-Donnegal Joint Authority	P. O. Box 167 Marietta, PA 17547	Lancaster County

Plan Description: The approved plan provides for the upgrade and expansion of the existing Marietta-Donnegal Joint Authority wastewater treatment facility by the construction of 0.75 mgd sequencing batch reactor process. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Southwest Regional Office, Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Peters Township	610 East McMurray Road McMurray, PA 15317	Washington

Plan Description: The approved plan provides for construction of a 500-gallon per day single residence sewage treatment plant to serve the Vidnovic single family home. The property is located at 250 Hill Place Road. The proposed discharge point is an unnamed tributary of

Reservoir No. 2, classified as a HQ, WWF. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate. The Department's review of the sewage facility revision has not identified any significant impacts resulting from this proposal.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site where one of the Act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program Manager in the Department Regional Office after which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Northeast Regional Field Office, Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

PPL—Harwood 69kV Substation, Hazle Township, Luzerne County. PPL Electric Utilities, 2 North Ninth Street, Allentown, PA 18101 has submitted a Final Report concerning the remediation of site soils found or suspected to be contaminated with PCBs. The report was submitted to document remediation of the site to meet the residential Statewide Health Standard.

PPL—Nazareth Switching Yard, Bushkill Township, Northampton County. PPL Electric Utilities, 2 North Ninth Street, Allentown, PA, 18101 has submitted a Final Report concerning the remediation of site soils found or suspected to be contaminated with PCBs. The report was submitted to document remediation of the site to meet the residential Statewide Health Standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, Administration of the Land Recycling and Environmental Remediation Standards Act (Act) requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the Act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the Act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program Manager in the Department Regional Office after which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Castrol Heavy Duty Lubricants, Inc.—Montgomery Facility, Clinton Township, **Lycoming County**. Z & A Environmental Services, LLC, on behalf of Castrol

Heavy Duty Lubricants, Inc., 9300 Pulaski Highway, Baltimore, MD 21220, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with BTEX and PAHs. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on February 13, 2003.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permit Modification issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 101509. New Morgan Landfill Co., Inc., P. O. Box 128, Morgantown, PA 19543-0128, New Morgan Borough, **Berks County**. The permit modification is for increase in average daily volume for the Conestoga Landfill. The permit modification was approved by the Southcentral Regional Office on February 10, 2003.

Persons interested in reviewing the general permit may contact John Krueger, Program Manager, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4706. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. 301626. White Pines Corporation, 320 Godshall Drive, Harleysville, PA 19438, for the White Pines Landfill located in Pine Township, **Columbia County**. A major permit modification was issued for a Radiation Protection Action Plan. The permit modification was issued by the Williamsport Regional Office on February 12, 2003.

Persons interested in reviewing the permit may contact David Garg, P. E., Acting Facilities Manager, Williamsport Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3653. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit No. 100419. J & J Landfill, CBF, Inc., Route 21, P. O. Box 266, McClellandtown, PA 15458. Expansion of a municipal waste landfill in German Township, **Fayette County**. Permit issued in the Regional Office on February 13, 2003.

Persons interested in reviewing the permit may contact the Department of Environmental Protection, Land Recycling and Waste Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; (412) 442-4000; TDD users may contact the Department through the Pennsylvania Relay Service at (800) 654-5984.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

GP1-22-03054: Pinnacle Health System (218 South 2nd Street, Harrisburg, PA 17101-2099) on February 10, 2003, for operation of a small gas and No. 2 oil fired combustion unit under GP1 in Lower Paxton Township, **Dauphin County**.

GP1-28-03010: Ventura Foods, LLC (1501 Orchard Drive, Chambersburg, PA 17201) on February 12, 2003, for operation of a small gas and No. 2 oil fired combustion unit under GP1 in Chambersburg Borough, **Franklin County**.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.

46-0014E: Knoll, Inc. (1235 Water Street, East Greenville, PA 18041) on January 31, 2003, for operation of a 500 kW emergency generator in Upper Hanover Township, **Montgomery County**.

46-0014C: Knoll, Inc. (1235 Water Street, East Greenville, PA 18041) on January 31, 2003, for operation of a cyclonic baghouse in Upper Hanover Township, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejksznier, Acting New Source Review Chief, (570) 826-2531.

35-303-011D: Dunmore Materials (Division of Haines and Kibblehouse, Inc.) (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on February 12, 2003, for modification of a batch asphalt plant to utilize waste derived liquid fuel as an alternate fuel at their facility on Dunham Drive, Dunmore Borough, **Lackawanna County**.

48-309-118: ESSROC Cement Corp. (3251 Bath Pike, Nazareth, PA 18064) on February 11, 2003, for major modification (Prevention of Significant Deterioration/PSD Approval) of the Portland Cement Manufacturing Operations and the installation of additional air cleaning devices at Nazareth Plants I—III in Nazareth Borough and Upper Nazareth Township, **Northampton County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

36-05104A: Ephrata Manufacturing Co. (104 West Pine Street, Ephrata, PA 17522) on February 12, 2003, for construction of a baghouse to control emissions from a

sand muller and a sand conveying system in Ephrata Borough, **Lancaster County**.

36-05126A: McMinn's Asphalt Co., Inc. (P. O. Box 4688, Lancaster, PA 17604-4688) on February 11, 2003, for construction of a hot mix batch asphalt plant controlled by a fabric filter baghouse in West Donegal Township, **Lancaster County**. This facility is subject to 40 CFR Part 60, Subpart I—Standards of Performance for Hot Mix Asphalt Facilities; and section 116b(b) of Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.

32-00354B: Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001) on February 13, 2003, for construction of Coal Prep Plant at Ernest 5 Mine in Rayne Township, **Indiana County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Devendra Verma, New Source Review Chief, (814) 332-6940.

43-170E: Werner Co.—Greenville Division (93 Werner Road, Greenville, PA 16125) on January 31, 2003, for modifications to the pultrusion process in Sugar Grove Township, **Mercer County**.

25-0955C: Foam Fabricators, Inc. (6550 West 26th Street, Erie, PA 16506) on January 30, 2003, for modifications to the polystyrene fabrication process in Erie, **Erie County**.

25-971F: Erie Plating Co. (656 West 12th Street, Erie, PA 16512) on January 22, 2003, for operation of solution tanks and scrubber in Erie, **Erie County**.

25-971G: Erie Plating Co. (656 West 12th Street, Erie, PA 16512) on January 22, 2003, for operation of 11 solution tanks and scrubbers in Erie, **Erie County**.

25-971E: Erie Plating Co. (656 West 12th Street, Erie, PA 16512) on January 22, 2003, for operation of solution tanks and mist eliminators in Erie, **Erie County**.

43-329A: White Rock Silica Sand Co., Inc. (331 Methodist Road, Greenville, PA 16125) on January 27, 2003, for operation of a diesel generator in Hempfield Township, **Mercer County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.

46-0036E: Visteon SYS LLC (2750 Morris Road, Lansdale, PA 19446) on February 12, 2003, for operation of a selective solder No. 9 in Worcester Township.

09-0128: East Coast Sign Advertising (5058 Route 13 North, Bristol, PA 19007) on February 12, 2003, for operation of paint spray booths in Bristol Township.

15-0104A: Tasty Baking Oxford, Inc. (700 Lincoln Street, Oxford, PA 19363) on February 12, 2003, for operation of line No. 1, 2 and 3 fryer in Oxford Borough.

23-0058: Haverford College (370 Lancaster Avenue, Haverford, PA 19041) on February 12, 2003, for operation of three 1,000 kW peak generators in Haverford Township.

23-0001P: Sunoco, Inc. (R and M) (Delaware Avenue and Green Streets, Marcus Hook, PA 19061) on February 12, 2003, for operation of low NOx burners for RACT No. 6 boiler in Marcus Hook Borough.

23-0001R: Sunoco, Inc. (R and M) (Delaware Avenue and Green Streets, Marcus Hook, PA 19061) on February 12, 2003, for operation of spud burners on No. 7 boiler in Marcus Hook Borough.

46-327-017: SPS Technologies, Inc. (Highland Avenue, Jenkintown, PA 19046) modified February 13, 2003, for operation of a vapor degreaser in Abington Township.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

53-0009D: National Fuel Gas Supply Corp. (P. O. Box 2081, Erie, PA 16512) on February 7, 2003, for operation of a 4,445 horsepower natural gas-fired reciprocating internal combustion compressor engine (Engine 1A) on a temporary basis, until June 7, 2003, at the Ellisburg Compressor Station in Allegany Township, **Potter County**. The plan approval has been extended.

08-316-013A: CraftMaster Manufacturing, Inc. (P. O. Box 311, Towanda, PA 18848) on January 31, 2003, to authorize operation of a hardboard press (Line II/Trimboard) and associated air cleaning device (a scrubber) on a temporary basis until June 1, 2003, in Wysox Township, **Bradford County**.

08-0004A: CraftMaster Manufacturing, Inc. (P. O. Box 311, Towanda, PA 18848) on January 31, 2003, to authorize operation of a woodwaste fired boiler and associated air cleaning device (an electrostatic precipitator) on a temporary basis until June 1, 2003, in Wysox Township, **Bradford County**.

08-302-039: CraftMaster Manufacturing, Inc. (P. O. Box 311, Towanda, PA 18848) on January 31, 2003, to authorize operation of two woodwaste fired boilers and associated air cleaning devices (an electrostatic precipitator and a selective noncatalytic reduction system) on a temporary basis until June 1, 2003, in Wysox Township, **Bradford County**.

08-316-014: CraftMaster Manufacturing, Inc. (P. O. Box 311, Towanda, PA 18848) on January 31, 2003, to authorize operation of a wood fiber blending facility and its associated air cleaning device (a fabric collector) and a steam heated hydraulic press (Die Form Press) on a temporary basis until June 1, 2003, in Wysox Township, **Bradford County**. This revision also limits the particulate emissions from the fabric collector to 0.11 pound per hour and 0.48 ton in any 12 consecutive month period.

08-318-024A: CraftMaster Manufacturing, Inc. (P. O. Box 311, Towanda, PA 18848) on January 31, 2003, to authorize operation of a hardboard products surface coating operation (Coating II) on a temporary basis until June 1, 2003, in Wysox Township, **Bradford County**.

18-00011D: Croda, Inc. (8 Croda Way, Mill Hall, PA 17751) on February 12, 2003, for operation of four VOC/HAP-containing material storage tanks and associated distribution systems on a temporary basis, until June 12, 2003, in Bald Eagle Township, **Clinton County**. The plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.

65-657A: Tresco Paving Corp. (P. O. Box 14004, Pittsburgh, PA 15239) on February 3, 2003, for installation of a drum mix asphalt plant TPC in Salem Township, **Westmoreland County**. This plan approval was extended.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

23-00014: Kimberly-Clark PA LLC (Front and Avenue of the States, Chester, PA 19013) for operation of a Title V facility that operates in the City of Chester, **Delaware County**. The Title V Operating Permit was revised as a result of a change in ownership from the parent company, Kimberly-Clark Corporation, to the wholly owned facility, Kimberly-Clark PA, LLC.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

06-05033: Texas Eastern Transmission LP (P. O. Box 1642, Houston, TX 77251-1642) on February 11, 2003, for operation of a natural gas transmission compressor station at the Bernville Compressor Station in North Heidelberg Township, **Berks County**. This is renewal No. 1 of the operating permit.

21-05009: PPL Martins Creek LLC (Two North Ninth Street, Allentown, PA 18101) on February 13, 2003, for operation of a combustion turbine site in Lower Allen Township, **Cumberland County**. This is renewal No. 1 of the operating permit.

22-05011: PPL Martins Creek LLC (Two North Ninth Street, Allentown, PA 18101) on February 12, 2003, for operation of a combustion turbine site in the City of Harrisburg, **Dauphin County**. This is renewal No. 1 of the operating permit.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.

18-00003: PPL Martins Creek, LLC (2 North Ninth Street, Allentown, PA 18101-1179) issued a renewal Title V operating permit on January 14, 2003, for their Lock Haven Combustion Turbine Site. This facility is in Bald Eagle Township, **Clinton County**. This Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

41-00003: PPL Martins Creek, LLC (2 North Ninth Street, Allentown, PA 18101-1179) issued a renewal Title V operating permit on January 14, 2003, for their Williamsport Combustion Turbine Site in Williamsport, **Lycoming County**. This Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

60-00007: United States Penitentiary, Lewisburg (P. O. Box 1000, Lewisburg, PA 17837) issued a renewal Title V operating permit January 16, 2003, for their Federal correctional facility in Kelly Township, **Union County**. The facility's sources include 4 natural gas/no. 2

fuel oil fired boilers, 42 natural gas fired heaters, 2 natural gas fired bake ovens, 2 natural gas fired drying ovens, 2 natural gas fired burnoff ovens and 1 emergency generator. The renewal Title V operating permit includes all applicable regulatory requirements including the Federal Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc). The renewal Title V operating permit contains all applicable monitoring, recordkeeping and reporting conditions.

47-00001: PPL Montour, LLC (2 North Ninth Street, Allentown, PA 18101-1179) issued a revised Title V operating permit on January 27, 2003, to include terms and conditions for the operation of an electrostatic precipitator and a selective catalytic reduction system to control emissions from unit no. 1. These air cleaning devices were constructed under plan approvals OP 47-0001E. This revision also incorporated the renewal of the Phase II (acid rain) Title IV permit. The acid rain permit is effective through December 31, 2007. This facility is located in Derry Township, **Montour County**. This Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

55-00001: Sunbury Generation, LLC (1088 Springhurst Drive, Green Bay, WI 54304) issued a revised Title V operating permit on February 5, 2003, to allow for the incorporated renewal of the Phase II (acid rain) Title IV permit. The acid rain permit is effective through December 31, 2007. This facility is in Shamokin Dam Borough, **Snyder County**. This Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

17-00001: Reliant Energy Mid Atlantic Power Holding (1088 Springhurst Drive, Green Bay, WI 54304) for issuance of a revised Title V operating permit on February 5, 2003, to allow for the incorporated renewal of the Phase II (acid rain) Title IV permit for their Shawville electricity generating facility in Bradford Township, **Clearfield County**. The acid rain permit is effective through December 31, 2007. This Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

25-00688: Hamot Medical Center (201 State Street, Erie, PA 16550) for operation of three boilers, a hospital medical infectious waste incinerator and eight emergency generators in the city of Erie, **Erie County**. The Title V Operating Permit was issued on February 10, 2003. The facility, because of rulemaking, is a Title V facility and is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

AQ-SE-0001: Glasgow, Inc. (Church Road, King of Prussia, PA 19406) reissued February 13, 2003, for operation of a portable stone crushing plant in Plymouth Township.

15-00084: Latta Veterinary Clinic (725 East Washington Street, West Chester, PA 19380) February 13, 2003, for operation of a Natural Minor Operating Permit in West Goshen Township.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

28-03012: Martins Famous Pastry Shoppe (1000 Potato Roll Lane, Chambersburg, PA 17201) on February 12, 2003, for operation of a snack food plant in Antrim Township, **Franklin County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.

08-00019: Stroehmann Bakeries L. C. (901 North Elmer Avenue, Sayre, PA 18840) for issuance of a State-only operating permit on January 10, 2003, for their bread bakery in Sayre Borough, **Bradford County**. This State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

08-00018: Athens Area School District (204 Willow Street, Athens, PA 18810) for issuance of a State-only operating permit on January 16, 2003, for their Harlan Rowe Middle School Campus in Athens Borough, **Bradford County**. This State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

17-00045: Department of Corrections (P. O. Box 1000, Houtzdale, PA 16698-1000) for issuance of a State-only (Synthetic Minor) operating permit on January 10, 2003, for the State Correctional Institution at Houtzdale in Woodward Township, **Clearfield County**. The facility's main sources include two bituminous coal/no. 2 fuel oil fired boilers, one no. 2 fuel oil fired boiler, two diesel fired emergency generators, one ash silo and one hydrated lime silo. The State-only (Synthetic Minor) operating permit includes all applicable regulatory requirements including the Federal Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc). The State-only (Synthetic Minor) operating permit contains all applicable monitoring, recordkeeping and reporting conditions.

14-00008: Cerro Metal Products Co. (P. O. Box 388, Bellefonte, PA 16823) for issuance of a State-only (Synthetic Minor) operating permit on January 30, 2003, for their copper rolling and drawing facility in Spring Township, **Centre County**. The facility's main sources include three natural gas/no. 2 fuel oil fired boilers, one natural gas/no. 2 fuel oil fired brass chip dryer, six melter holder electric induction furnaces, five natural gas fired billet furnaces, three natural gas/no. 2 fuel oil fired small rod coil annealing furnaces, six natural gas fired buzzer furnaces, large rod brass pickling operation and graphite machining operation. This operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

17-00047: Howes Leather Corp. (50 Cooper Road, Curwensville, PA 16833) for issuance of a State-only (Synthetic Minor) operating permit on January 9, 2003, for their leather tanning and finishing facility in

Curwensville Borough, **Clearfield County**. The facility's main sources include a two natural gas/no. 2 fuel oil fired boilers and one no. 2 fuel oil fired boiler. This operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

49-00037: H. Warshow and Sons, Inc. (747 South Front Street, Milton, PA 17847) for issuance of a State-only (Synthetic Minor) operating permit on January 28, 2003, for their textile dyeing and finishing facility in Milton Municipality, **Northumberland County**. The facility's main sources include one natural gas/no. 2 fuel oil fired boiler, one natural gas/no. 2 fuel oil fired heat exchanger, one Artos dryer, one Krantz dryer and two jigs. This operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

08-00020: Calvin C. Cole, Inc. (809 North Elmira Street, Sayre, PA 18840) for issuance of a State-only operating permit on January 10, 2003, for their hot drum mix asphalt plant facility in Athens Township, **Bradford County**. The facility's main sources include a hot mix asphalt plant and diesel fired electric generator. This operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

17-00030: Clearfield Machine Co. (3rd and Everett Street, P. O. Box 992A, Clearfield, PA 16830) for issuance of a State-only operating permit on January 21, 2003, for their gray and ductile iron foundry in Clearfield Borough, **Clearfield County**. The facility's main sources include two natural gas/no. 2 fuel oil fired melting furnaces, one molding sand reclamation system, mold painting operation, mold pouring, cooling and shakeout operation, cleaning and finishing operation. This operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.

59-00004: Ward Manufacturing, Inc. (115 Gulick Street P. O. Box 9, Blossburg, PA 1692-0009) for issuance of a revised Title V operating permit on December 19, 2002, to include a minor operating permit modification allowing the replacement of a double cone wet cap with a seal cap and a particulate drop out box to control particulate emissions from the cupola for their facility in Blossburg Borough, **Tioga County**. This Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

12-00002: GKN Sinter Metals (R. R. 2 Box 47, Emporium, PA 15834) for issuance of a revised operating permit, Revision No. 2, on January 28, 2003, for their powdered metal parts manufacturing facility in Shippen Township, **Cameron County**. The revision of this permit is to incorporate the moving of electric sintering furnaces PF 12 and PF 71, the removal of the Aeropulse fabric collector from all the electric sintering furnaces at the facility, the incorporation of TIER I requirements for all the electric sintering furnaces at the facility, the removal

of heat treat operations (Source IDs P207, P209 and P217) from the facility, the removal of two Buzzer Industrial Equipment furnaces from the facility and the addition of two Lucifer Furnace, Inc. electric heat treat furnaces. This revision also includes the change in Federal tax ID from 25-1677695-1 to 38-3354796-1. This Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

42-00122: Kane Magnetics Acquisition, LLC (700 Elk Avenue, Kane, PA 16735-1068) the Title V permit (issued July 6, 1999) was administratively amended on February 11, 2003, to reflect the change in ownership from Kane Magnetics International, Inc. to Kane Magnetics Acquisition, LLC in Kane Borough, **McKean County**.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); and The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes; the Air Quality Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

Coal Permits Actions

Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.

17020108 and NPDES Permit No. PA0243299. R. B. Contracting, R. R. 1, Box 13, Curwensville, PA 16833. Commencement, operation and restoration of a bituminous surface mine permit in Jordan Township, **Clearfield County** affecting 15.8 acres. Receiving streams: Comfort Run to North Witmer Run to Clearfield Creek. Application received October 2, 2002. Permit issued February 5, 2003.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

26020104 and NPDES Permit No. PA0250201. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Permit for commencement, operation and reclamation of a bituminous surface mine located in Springfield Township, **Fayette County**, affecting 43.4 acres. Receiving stream: unnamed tributary to Poplar Run. Application received July 26, 2002. Permit issued February 14, 2002.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

56960108 and NPDES Permit No. PA0234265. PBS Coals, Inc., P. O. Box 260, Friedens, PA 15541, permit renewal for reclamation only and for continued restoration of a bituminous surface mine and for discharge of treated mine drainage in Brothersvalley Township, **Somerset County**, affecting 101.0 acres. Receiving streams: unnamed tributary to Buffalo Creek; Buffalo Creek (CWF). There are no potable water supply intakes within 10 miles downstream. Application received January 3, 2003. Permit issued February 10, 2003.

56000104 and NPDES Permit No. PA0235270. PBS Coals, Inc., P. O. Box 260, Friedens, PA 15541, permit revision to conduct surface mining activities within 100 feet of two unnamed tributaries to Tubs Run and for discharge of treated mine drainage in Brothersvalley Township, **Somerset County**, affecting 147.2 acres. Receiving streams: unnamed tributaries to Tubs Run; Tubs Run (WWF). There are no potable water supply intakes within 10 miles downstream. Application received December 12, 2002. Permit issued February 13, 2003.

McMurray District Mining Office: 3913 Washington Road, McMurray, PA 15317, (724) 941-7100.

24991301. NPDES Permit PA0235466, Rosebud Mining Co. (R. D. 9, Box 379A, Kittanning, PA 16201), to operate the Little Toby Mine in Horton Township, **Elk County** to, to operate a new underground mine, Surface Acres Proposed 18.6, Underground Acres Proposed 1346, SCP Acres Proposed 1173, CRDP Support Acres Proposed N/A, CRDP Refuse Disposal Acres Proposed N/A, unnamed tributary "A" to Little Toby Creek (CWF). The first downstream potable water supply intake from the point of discharge is N/A. Permit issued February 6, 2003.

Noncoal Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

58020822. Timothy Fisher (R. R. 1, Box 96B, New Milford, PA 18834), commencement, operation and restoration of a quarry operation in Harford Township, **Susquehanna County** affecting 3.0 acres, receiving stream: none. Application received April 26, 2002. Permit issued February 7, 2003.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151—161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

46034004. Allan A. Myers, L. P. (P. O. Box 98, Worcester, PA 19490), construction blasting in Montgomery Township, **Montgomery County** with an expiration date of March 4, 2004. Permit issued February 6, 2003.

46034003. Allan A. Myers, L. P. (P. O. Box 98, Worcester, PA 19490), construction blasting in Horsham Township, **Montgomery County** with an expiration date of March 4, 2004. Permit issued February 6, 2003.

45034006. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting in Smithfield

Township, **Monroe County** with an expiration date of January 31, 2006. Permit issued February 6, 2003.

48034003. Labrador Construction (P. O. Box 1379, Marshalls Creek, PA 18335), construction blasting in Allen Township, **Northampton County** with an expiration date of June 30, 2003. Permit issued February 6, 2003.

46034005. AMROC, Inc. (7531 Chestnut Street, Zionsville, PA 18092), construction blasting in Plymouth Township, **Montgomery County** with an expiration date of March 4, 2004. Permit issued February 6, 2003.

48034004. AMROC, Inc. (7531 Chestnut Street, Zionsville, PA 18092), construction blasting in Upper Nazareth Township, **Northampton County** with an expiration date of March 9, 2004. Permit issued February 6, 2003.

28034004. Borough of Waynesboro (57 East Main Street, Waynesboro, PA 17268), construction blasting in Waynesboro Borough, **Franklin County** with an expiration date of September 4, 2003. Permit issued February 6, 2003.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341(a)).

Except as otherwise noted, the Department certifies that the construction and operation herein described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State Water Quality Standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law (35 P.S. §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)). (Note: Water Obstruction and Encroachment Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

Permits Issued and Actions on 401 Certifications

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

E40-589. Keystone Operating Partnership, L. P. c/o Keystone Property Trust, 200 Four Falls Corporate Center, West Conshohocken, PA 19428. Hazle Township, **Luzerne County**, Army Corps of Engineers Baltimore District.

To place fill in 3.07 acres of regulated waters, including 2.0 acres of wetlands and 1.07 acres of open water, within the watershed of Stony Creek, for the purpose of constructing a warehouse/manufacturing and distribution facility on a 50.4-acre site. The permittee is required to provide 2.0 acres of replacement wetlands. The project is located on Lot 1A in the Humboldt Industrial Park, along the south side of SR 0924, approximately 0.75 mile west of the SR 0924/SR 0081 interchange (Conyngham, PA Quadrangle N: 11.1 inches; W: 5.5 inches).

E48-324. CTHL-1, Inc., 824 Eighth Avenue, Bethlehem, PA 18018. Palmer Township, **Northampton County**, Army Corps of Engineers Philadelphia District.

To construct and maintain a stormwater outfall structure consisting of a 10-foot by 5-foot concrete box culvert and associated energy dissipator in Bushkill Creek for the purpose of conveying stormwater runoff from Tatamy

Hunt and The Villages at Mill Race residential subdivisions directly to the stream channel. The project is located approximately 1,500 feet north of the intersection of Bushkill Drive and Newlins Road (Easton, PA-NJ Quadrangle N: 19.5 inches; W: 17.0 inches).

E39-411. Lehigh County, 17 South Seventh Street, Allentown, PA 18101-2400. Coplay Borough, **Lehigh County**, Army Corps of Engineers Philadelphia District.

To repair and maintain the Lehigh County portion of the Chestnut Street Bridge across the Lehigh River with repairs consisting of the placement of grout bags in a scoured area along Pier No. 4. The project is located at the intersection of Chestnut Street and the Lehigh River (Catasauqua, PA Quadrangle N: 9.2 inches; W: 15.9 inches).

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

E14-432. Jesse W. Burkholder, 165 Burkholder Lane, Spring Mills, PA 16875-8001. Culvert Construction, in Penn Township, **Centre County**, ACOE Baltimore District (Spring Mills, PA Quadrangle N: 20.00 inches; W: 0.30 inch).

To construct and maintain two side-by-side 30-inch diameter by 60 feet long culvert pipes depressed in the streambed of an unnamed tributary to Penns Creek off Paradise Road about 1.5 miles from the intersection of Paradise Road with Route 45. The project will not impact wetlands while impacting approximately 70 feet of waterway. The unnamed tributary to Penns Creek is a CWF stream. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E19-231. Town of Bloomsburg, 201 East Second Street, Bloomsburg, PA 17815. Fill in Floodway Fringe, in the Town of Bloomsburg, **Columbia County**, ACOE Baltimore District (Catawissa, PA Quadrangle N: 9.50 inches; W: 21.90 inches).

To maintain fill in an area of approximately 0.19 acre and measuring about 262 feet long by 12 to 40 feet in width by about 6 feet in depth in the floodway fringe of the North Branch Susquehanna River between 10th Street and Fort McClure Boulevard in the Town of Bloomsburg, Columbia County. This permit was issued under section 105.13(e) "Small Projects."

E41-488. Charles Bidelspacher, III, 428 Market Street, Williamsport, PA 17707. Recreation Area, in the City of Williamsport and Woodward Township, **Lycoming County**, ACOE Baltimore District (Williamsport, PA Quadrangle N: 5.5 inches; W: 6.25 inches).

To operate and maintain 142 structures in the floodway and 63 floating docks located on the West Branch of the Susquehanna River. The docks are authorized for installation from April 15 to October 15 of the same year. The property is located at the southern most point of Reach Road. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E53-380. Adelphia Communications Corp., 1 North Main Street, Coudersport, PA 16915. Adelphia Data Center Stormwater Outfall, in Coudersport Borough, **Potter County**, ACOE Pittsburgh District (Coudersport, PA Quadrangle N: 3.0 inches; W: 4.0 inches).

To construct, operate and maintain a stormwater conveyance pipe and outfall structure in and along the Allegheny River. The stormwater conveyance shall be

constructed with a 30-inch diameter high-density plastic pipe. The outfall structure shall be constructed with a R-7 riprap. Since the Allegheny River is a wild trout fishery, no construction or future repair work shall be done in or along the stream channel between October 1 and December 31 without the prior written approval of the Fish and Boat Commission. Since the Allegheny River is also a stock trout fishery no construction or future repair work shall be done in or along the stream channel between March 1 and June 15 without the prior written approval of the Fish and Boat Commission. The project is located along the southern right-of-way of SR 0006 approximately 2,250 feet west of SR 3017 and SR 006 intersection. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E55-189. Union-Chapman Regional Authority, R. R. 1, Box 598, Port Trevorton, PA 17864. Water Obstruction and Encroachment Permit application, in Union Township, **Snyder County**, ACOE Susquehanna River Basin District (Pillow, PA Quadrangle N: 13.6 inches; W: 0.7 inch).

To construct and maintain 220 feet of 10-inch outfall sewer line in the floodplain of the Susquehanna River located along SR 0015 along the eastern right-of-way of SR 0015 near Port Trevorton in Union Township, Snyder County. This permit was issued under section 105.13(e) "Small Projects."

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1378. Turnpike Commission, P. O. Box 67676, Harrisburg, PA 17106. Findlay Township, **Allegheny County**, ACOE Pittsburgh District.

To construct and maintain the following structures as part of the construction of 2.2 miles of new four-lane, divided, limited-access highway known as section 54B of the Southern Beltway (Findlay Connector) located in Findlay Township, Allegheny County:

Two parallel bridges having three spans at 191.5 feet, 235.0 feet and 191.5 feet and an underclearance of 92.0 feet over Potato Garden Run (WWF), Station 253+00 (Clinton, PA Quadrangle N: 15.3 inches; W: 7.2 inches). 40-27-33/80-18-06.

Two 36-inch diameter outfalls in Potato Garden Run (WWF), Stations 252+00 and 252+10 (Clinton, PA Quadrangle N: 15.3 inches; W: 7.2 inches). 40-27-33/80-18-6.

A 360 foot long, 33-inch diameter concrete pipe in an unnamed tributary to Potato Garden Run (WWF), Station 230+00 (Clinton, PA Quadrangle N: 16.1 inches; W: 6.3 inches). This pipe qualifies for Department waiver 105.12(a)(2). 40-27-49/80-17-43.

Two parallel bridges having one span of 185.0 feet and an underclearance of 26.0 feet over an unnamed tributary to Potato Garden Run (WWF), Station 215+00 (Clinton, PA Quadrangle N: 16.7 inches; W: 5.7 inches). 40-28-1/80-17-28.

A temporary stream crossing consisting of five 36-inch diameter corrugated metal pipes in Potato Garden Run (WWF), Station 252+30 (Clinton, PA Quadrangle N: 15.3 inches; W: 7.2 inches).

A temporary stream crossing consisting of three 24-inch diameter corrugated metal pipes in an unnamed tributary to Potato Garden Run (WWF), Station 216+00 (Clinton, PA Quadrangle N: 16.7 inches; W: 5.7 inches).

Also, to relocate and maintain 1,478 linear feet of an unnamed tributary to Potato Garden Run (WWF), Station 208+95 right to Station 219+72 left (Clinton, PA Quadrangle N: 16.7 inches; W: 5.7 inches). 40-28-1/80-17-28.

To compensate for the wetland impacts, the applicant is proposing creation of 2.531 acres of replacement wetlands in the Raredon Run Watershed.

To permanently place and maintain fill in 2.481 acres of wetland (2.381 acres PEM, 0.1 acre PSS) and to temporarily place and maintain fill in 0.106 acre of wetlands (0.073 acre PEM, 0.033 acre PSS). Begin: (Clinton, PA Quadrangle N: 14.4 inches; W: 7.7 inches; End: Clinton, PA Quadrangle N: 16.6 inches; W: 5.6 inches).

ENVIRONMENTAL ASSESSMENTS

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

EA06-004: Ryan K. Inch, Pioneer Crossing Land-fill, 727 Red Lane Road, Birdsboro, PA 19508, in Exeter Township, Berks County, ACOE Philadelphia District.

To construct and maintain a stream improvement project consisting of: (1) trash and debris removal; (2) placement of riprap scour protection; (3) removal of gravel washed from adjacent roadways; (4) removal of an existing 24-inch CMP; (5) replacement of an existing 14-inch steel pipe culvert with a 2-foot by 4-foot concrete box culvert; (6) eradication of invasive plant species; and (7) installation of native riparian plantings in and along 1,250 feet of an unnamed tributary to the Schuylkill River (WWF) near the intersection of Lincoln Road and South Center Road (Birdsboro, PA Quadrangle N: 4.3 inches; W: 8.2 inches) in Exeter Township, Berks County.

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

D21-006EA. Darren Bennett, 165 Creek Road, Newville, PA 17214. West Pennsboro and Upper Frankford Townships, **Cumberland County**, ACOE Baltimore District.

To breach and remove the Black Dam across Conodoguinet Creek (WWF) for the purpose of restoring the stream to a free flowing condition. The dam is located approximately 1,200 feet southwest of the intersection of Crossroad School Road (T438) and Creek Road (T427) (Plainfield, PA Quadrangle N: 12.5 inches; W: 17.05 inches).

[Pa.B. Doc. No. 03-358. Filed for public inspection February 28, 2003, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are on the Department of Environmental Protection's (Department) website (www.dep.state.pa.us) at the Public Participation Center page. The "January 2003 Inventory" heading is the Governor's list of nonregulatory guidance documents. The "Final Documents" heading is the link to a menu of the various Department bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2003.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view guidance documents. When this option is not available, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Final Technical Guidance

DEP ID: 254-5400-001. Title: Best Management Practices (BMPs) for the Management of Waste from Land Clearing, Grubbing, and Excavation (LCGE). Description: The Commonwealth's municipal waste regulations, amended and published as final on December 23, 2000, retained the permit exemption for activities relating to the use of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative materials. However, due to problems associated with mismanagement of these materials, the final regulations include mandatory implementation of BMPs. This manual discusses the BMPs that should be followed for operations involving land clearing, grubbing and excavation materials, including environmental concerns that precipitated the need for these practices. Effective Date: March 1, 2003. Contact: Habib Sharifihoessin, (717) 787-7381, hsharifiho@state.pa.us.

KATHLEEN A. MCGINTY,
Acting Secretary

[Pa.B. Doc. No. 03-359. Filed for public inspection February 28, 2003, 9:00 a.m.]

Laboratory Accreditation Advisory Committee; Ad Hoc Workgroup Meeting

The Department of Environmental Protection's Laboratory Accreditation Advisory Committee (Committee) established an ad hoc workgroup to consider education, training and proficiency requirements for persons receiving accreditation and performing testing and analysis through accreditation by rule.

The ad hoc workgroup will meet on March 5, 2003, at 9 a.m. in the 10th Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg. Questions concerning this meeting should be directed to Richard Sheibley, Chief, Laboratory Accreditation Program, Bureau of Laboratories, (717) 705-2425, rsheibley@state.pa.us.

The ad hoc work group will report its deliberations at the full Committee meeting scheduled for April 8, 2003.

KATHLEEN A. MCGINTY
Acting Secretary

[Pa.B. Doc. No. 03-360. Filed for public inspection February 28, 2003, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Draft Standing Practice Order

The Department of Public Welfare (Department) announces its intent to issue the Standing Practice Order (Order) to govern Medical Assistance provider appeals heard before the Bureau of Hearings and Appeals (Bureau). Once issued, this Order will govern practice before the Bureau.

The act of December 3, 2002 (P.L. , No. 142) added 67 Pa.C.S. Chapter 11 (relating to Medical Assistance hearings and appeals). Section 1102(g) of 67 Pa.C.S. (relating to hearings before the Bureau) requires the Department to issue a standing order establishing rules governing practice before the Bureau prior to July 1, 2003, after receiving comment by interested parties. Chapter 11 of 67 Pa.C.S. provides a statutory framework for the provider appeal process that mandates, among other things, prompt adjudications, reasonable and necessary discovery and impartial adjudications to be implemented through the standing order. The goal of this Order is to ensure the just and speedy determination of provider appeals. The Order is organized to allow a reader to follow the basic order in 1 Pa.C.S. Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP). However, as set forth in Rule 2(b) (relating to construction and application of rules), the GRAPP provisions are inapplicable unless a provision to the contrary appears in Annex A to this notice.

The following draft practice order accommodates the important goals embodied in 67 Pa.C.S. Chapter 11 by providing for the mandatory disclosure of information by both sides, a 120-day discovery period and the filing of detailed position papers by each party. The draft general order adopts many of the procedural rules of GRAPP. However, significant modifications have been made to accommodate the specific requirements of 67 Pa.C.S. Chapter 11 within the framework of a prompt adjudication. In addition, the Bureau has drawn upon the procedural rules used by the Federal Provider Reimbursement Review Board and the discovery rules set forth in the 231 Pa. Code (relating to Rules of Civil Procedure). The Order also contains a procedure for the expedited disposition of certain appeals which traditionally have been handled in a less formal manner.

The Bureau expects these rules to substantially speed the process of resolving provider appeals. The mandatory disclosures requirement will expedite and simplify the discovery stage; the position paper requirement should facilitate the mutual resolution of disputes and, where settlement does not occur, should minimize or eliminate the need for evidentiary hearings, as should the possibility of resolution through dispositive motions. In addition, when a provider appeal proceeds to a hearing under the regular process set forth in this Order, the Bureau

expects that, in most instances, the appeal will move from commencement to hearing within a period of 10 months, except when dispositive motions are filed. When the expedited process is used, the Bureau expects that the evidentiary hearing will be held in substantially less time.

The provider appeal process commences with the filing of a request for hearing with the Bureau. The requirements for a request for hearing are set forth in detail in 67 Pa.C.S. § 1102(b). Of particular significance is the requirement in the law that amendments to the request for hearing may only be made as of right within 90 days after the filing of the request for hearing. This requirement evidences the Legislature's intent that the appeal document is more than a mere perfunctory notice. Accordingly, Rule 35(d) (relating to disclosures) requires providers to set forth specific factual or legal objections to the Department's action. Once the 90-day period has elapsed, the disputed facts and issues included in the request for hearing will govern further proceedings. Consolidation with other appeals, and intervention into the proceeding, will generally not be permitted after the 90-day period has elapsed.

Upon receipt of a proper request for hearing, the Bureau will issue an acknowledgment letter containing certain critical deadlines, including the deadline for mandatory initial disclosure, the completion of discovery and the filing of position papers. The parties are expected to take the mandatory disclosure obligation seriously and sanctions may be imposed for failing to make good faith disclosures. In audit appeals, for example, the Department is expected to produce workpapers relative to disputed adjustments along with identifying information regarding the auditors. The provider, in turn, is expected to provide identifying information regarding individuals who determined that the auditors made errors, along with their workpapers and other documents supporting those assertions.

Both parties are allowed 120 days to conduct additional discovery. Consistent with the procedures in many other tribunals, interrogatories and requests for admission are limited. Extensive interrogatories are often burdensome as well as unnecessary, and disputes over the wording of interrogatory responses are not an appropriate use of adjudicatory resources. Admission requests are limited because the parties should be communicating with each other and facts that would be admitted in response to requests for admission should be stipulated to. Depositions are limited to three in number. Experience has shown that these limits are usually reasonable and exceptions to permit additional discovery may be made by the Bureau for good cause shown. Additionally, senior Department managers may not be deposed unless their information is indispensable to the case.

Following the conclusion of discovery, the provider is required to file a comprehensive position paper. This position paper is intended to be specific and should completely present the party's case in written form. If the provider fails to file a timely and complete position paper, the appeal will be considered to be abandoned, and the Bureau will automatically dismiss the matter. The Department will file its position paper within 60 days of the filing of the provider's position paper subsequent to which the case can be subject to a summary judgment motion or proceed to an evidentiary hearing.

Providers' obligations, including those in 55 Pa. Code §§ 1101.51(e) and 1101.71 (relating to ongoing responsibilities of providers; and utilization control) to make

records available and cooperate with Department reviews, remain unaffected and are not limited by these rules.

Fiscal Impact

The fiscal note was prepared under the authority of section 612 of The Administrative Code of 1929 (71 P. S. § 232).

Contact Person

The Department seeks comment from interested parties regarding the general procedure summarized in this notice, and the more specific and detailed implementing rules to read as set forth in Annex A. Comments should be submitted within 30 days of the date of publication of this notice to Thomas Cheffins, Director, Bureau of Hearings and Appeals, Department of Public Welfare, 2330 Vartan Way, 2nd Floor, Harrisburg, PA 17110-9721.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Advisory Committee

Under 67 Pa.C.S. § 1106(b), the Bureau intends to establish an advisory committee to provide assistance and guidance in the development and modification of regulations that may be promulgated after issuance of the standing order. The advisory committee will include individuals experienced in proceedings before the Bureau and other administrative agencies. Individuals interested in serving on the advisory committee should send a letter communicating their interest to Thomas Cheffins at the address previously listed.

ESTELLE B. RICHMAN,
Acting Secretary

Fiscal Note: 14-NOT-350. No fiscal impact; (8) recommends adoption.

Annex A

DEPARTMENT OF PUBLIC WELFARE BUREAU OF HEARINGS AND APPEALS

Standing Practice Order Pursuant to § 20.1 of Act 142-2002 Establishing Rules Governing Practice And Procedure In Medical Assistance Provider Appeals

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Part I—Preliminary Provisions**Subpart A. General Provisions****Rule 1. Scope of Rules.**

This order is issued pursuant to Act 2002-142, § 20.1 (67 Pa.C.S. §§ 101-1106 (relating to medical assistance hearings and appeals). The rules adopted by this order govern practice and procedure before the Bureau in provider appeals. These rules do not apply to appeals governed by 55 Pa. Code Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

Rule 2. Construction and application of rules.

(a) The rules adopted by this order shall be liberally construed to secure the just, speedy and inexpensive determination of provider appeals.

(b) Except to the extent that Appendix A to these rules provides to the contrary, these rules replace and supersede the General Rules of Administrative Practice and Procedure ("GRAAP"), set forth at 1 Pa. Code Part II

(relating to general rules of administrative practice and procedure). To the extent that GRAAP applies in provider appeals, when the term "agency" is used in 1 Pa. Code Part II, the term "Bureau" is to be understood; when the term "participant" is used in 1 Pa. Code Part II, the term "party" is to be understood; and when the term "presiding officer" is used in 1 Pa. Code Part II, the term "presiding officer" is to be understood.

Rule 3. Definitions.

The following words and terms, when used in these rules, have the following meanings, unless the context clearly indicates otherwise:

Agency Action—An action of the Department or a program office that relates to the administration of the MA Program. The term includes the actions identified in 55 Pa. Code §§ 1101.84(a)–(c) (relating to provider right of appeal) and 1187.141(a) (relating to nursing facility's right to appeal and to a hearing) and other actions relating to a provider's enrollment in, participation in, claims for payment or damages under, or penalties imposed under the MA Program.

Bureau—The Bureau of Hearings and Appeals.

Department—The Department of Public Welfare.

Director—The Director of the Bureau.

Dispositive motion—A motion that seeks a final determination of one or more of the issues in a provider appeal without the need for hearing or further hearing. The term includes: a motion to quash the provider appeal, a motion to dismiss the provider appeal, a motion for summary judgment, and a motion for partial summary judgment, but does not include a motion in limine.

Hearing—A proceeding commenced for the purpose of: (1) creating a factual evidentiary record relative to the merits of one or more issues raised in a request for hearing; or (2) resolving an interlocutory matter, including but not limited to a petition for supersedeas.

Legal document—A motion, answer, brief, petition to intervene, request for reconsideration of an interlocutory order, request for review by the Secretary, or other paper filed with the Bureau in a provider appeal, other than a pleading. The term does not include attachments or exhibits.

Pa.R.C.P.—Pennsylvania Rules of Civil Procedure.

Party—A provider, a program office, or an intervenor.

Person—An individual, partnership, association, corporation, political subdivision, municipal authority or other entity.

Petition for relief—Any pleading filed by a provider pursuant to Rule 21 that commences a provider appeal and that is not a request for hearing.

Pleading—A request for hearing, including any amendments thereto, or a petition for relief.

Presiding officer—An individual designated by the Director to preside at a hearing or a prehearing conference.

Program office—An office within the Department which is managed and operated by a deputy secretary or other person who reports directly to the Secretary, including a Deputy Secretary, or a bureau or other administrative unit of an office within the Department which is managed and operated by person who reports directly to a deputy secretary. The term does not include the Bureau.

Provider—Either (i) a person currently enrolled in the MA Program as a provider of services; or (ii) a person who

has applied for enrollment in the MA Program as a provider of services; or, (iii) a person whose enrollment in the MA Program as a provider of services has been suspended or terminated by the Department.

Provider appeal—A proceeding that is commenced by a provider by filing a request for hearing or petition for relief.

Request for hearing—A pleading filed by a provider in order to appeal and obtain review of an agency action.

Secretary—The Secretary of Public Welfare.

Senior Department Official—the Comptroller, the Chief Counsel of the Department, a person who works in the Office of the Secretary or who reports directly to the Secretary, including a Deputy Secretary; or a director of a bureau within a program office.

Supersedeas—An order suspending the effect of an agency action pending the Bureau's determination in a provider appeal.

Waiver request—a request that the Secretary waive the application of a provision set forth in a Department regulation.

Rule 4. Amendments to rules.

(a) The Department retains continuing jurisdiction under 67 Pa.C.S. § 1106 (relating to regulations) to adopt regulations establishing rules of procedure as may be necessary to govern provider appeals.

(b) The Bureau will establish an advisory committee, including individuals experienced in proceedings before the Bureau and other administrative agencies, to provide assistance and guidance in the development and modification of regulations which may be promulgated under 67 Pa.C.S. § 1106.

(c) The Bureau may establish such forms as may be required to implement these Rules.

Rule 5. Jurisdiction of the Bureau.

(a) Except as provided in subsections (b), (c) and (d), the Bureau has exclusive jurisdiction over all provider appeals.

(b) The Bureau has no jurisdiction to make a final determination on a waiver request included in a request for hearing. The Bureau will create a record and make a recommendation to the Secretary regarding the waiver request as specified in Rule 52(b) (relating to determinations and recommendations by the bureau).

(c) The Bureau has no jurisdiction to issue a final determination on the merits of an issue properly raised in a petition for relief. If a provider files a petition for relief, the Bureau will create a record and make a recommendation to the Secretary regarding the petition for relief as specified in Rule 52(c) (relating to determinations and recommendations by the bureau).

(d) The Bureau's jurisdiction in provider appeals is subject to Rule 54 (relating to reconsideration of interlocutory orders) and Rule 55 (relating to review of bureau determinations).

Subpart B. Time

Rule 6. Timely Filing Required.

Pleadings and legal documents required or permitted to be filed under this part, the regulations of the Department or any other provision of law shall be received for filing at the Bureau within the time limits, if any, permitted for the filing. Except as provided in Rule 19(b)

(relating to timeliness and perfection of appeal), the filing date is the date of receipt by the Bureau, and not the date of mailing.

Rule 7. Extensions of time.

(a) Except when necessitated by the circumstances of the Bureau, no order or pre-hearing order shall continue a provider appeal or extend the time for doing any act required by these rules except upon written motion by a party filed in accordance with these rules.

(b) Where these rules establish a standard for an extension of time, a motion seeking such an extension shall be resolved by the application of that standard. In the event that these rules do not otherwise establish such a standard, the motion shall be resolved by application of the rules set forth in 1 Pa. Code § 31.15 (relating to extensions of time).

Part II—Documentary Filings

Subchapter A. General Requirements

Filings Generally

Rule 8. Title.

(a) All legal documents in a provider appeal commenced by a request for hearing, other than the initial pleading, shall display a caption at the top of the first page in the following form:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF HEARINGS AND APPEALS

[Name of Provider] v. [Name of Program Office]
BHA I.D. No.:
Docket No.:

[Descriptive Title of Document]

(b) All legal documents in a provider appeal commenced by a petition for relief, other than the initial pleading, shall display a caption at the top of the first page in the following form:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF HEARINGS AND APPEALS

IN THE MATTER OF: [Name of Provider]

BHA I.D. No.:

Docket No.:

[DESCRIPTIVE TITLE OF DOCUMENT]

(c) The descriptive title of a legal document shall identify the party on whose behalf the filing is made. (E.g., Appellant's Motion to Compel Discovery.)

Rule 9. Form.

Legal documents shall conform to the requirements of 1 Pa. Code § 33.2 (relating to form) except that the font used must be at least 12 point.

Rule 10. Incorporation by Reference.

Any legal document on file with the Bureau in a provider appeal, and any exhibits or attachments thereto, may be incorporated by reference into another legal document that is subsequently filed in the same provider appeal. A document may be so incorporated by reference to the specific document and prior filing in which it was physically filed, but not by reference to another document that incorporates it by reference.

Execution And Verification

Rule 11. Verification.

(a) Every legal document that contains an averment of fact not appearing of record or that contains a denial of fact shall be verified as specified in Pa.R.C.P. 1024 (relating to verification).

(b) "Verified," when used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Copies

Rule 12. Number of copies; copying of Bureau documents.

(a) Unless otherwise ordered by the Bureau, only one original of a pleading or a legal document shall be filed with the Bureau.

(b) One copy of any pleading or legal document filed with the Bureau will be served on each of the other parties to the provider appeal unless otherwise specified in these rules.

(c) Any document filed with the Bureau in a provider appeal is available for inspection and copying except that, where a document contains information protected by law against public disclosure, the document shall not be available unless and until the protected information has been redacted. When redaction is required, the person seeking access to or a copy of the document shall be required to pay the actual cost of redaction prior to the document being made available.

(d) Documents in the files of the Bureau shall not be removed from the Department's custody. A person provided with access to a document pursuant to (c) may make a photocopy of that document using a photocopier available at the Bureau at a charge of \$0.15 per page. Upon request the Bureau may, in its discretion, agree to make a photocopy and provide it to the person requesting access, in which case the charge shall be \$0.25 per page. In the event that a person wants a certified copy of a document, the copy shall be made by the Bureau at the rate of \$0.25 per page and, in addition, the fee for the certification shall be \$2.00 per document.

Subchapter B. Service Of Documents

Rule 13. Notice of agency actions.

The Department or a program office may give notice of an agency action by: (1) mailing a written notice of the action to a provider at the provider's business address; (2) serving notice of the action in the manner provided in Pa.R.C.P. 400—441; or (3) by publication in the *Pennsylvania Bulletin*.

Rule 14. Service of pleadings and legal documents.

Service of pleadings and legal documents shall be made as follows:

(1) *Request for hearing.* The provider that files a request for hearing shall serve a copy of the request on:

(i) The program office that initiated the agency action in dispute; and,

(ii) The Department's Office of General Counsel.

(2) *Petition for relief.* The provider that files a petition for relief shall serve a copy of the petition on:

(i) The Secretary; and,

(ii) The Department's Office of General Counsel.

(3) *Legal document.* A party that files a legal document in a provider appeal shall serve a copy of the document on all other parties to the appeal.

(4) *Method of service.* Service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy of the pleading or legal document.

Rule 15. Proof of Service.

A certificate of service in the form prescribed in Rule 16 (relating to certificate of service) shall accompany and be attached to a pleading or legal document filed with the Bureau.

Rule 16. Certificate of Service.

Each certificate of service shall substantially conform to the following:

I hereby certify that I have this day served the foregoing document upon:

[Identify name and address of each person served] by
[Indicate method of service].

Subchapter C. Miscellaneous Provisions

Amendments And Withdrawals Of Legal Documents

Rule 17. Amendment and withdrawal of legal documents.

(a) A party may amend a legal document, other than position paper, by filing an amendment with the Bureau at any time unless the Bureau otherwise orders.

(1) An amendment to a legal document shall be deemed filed as of the date of receipt by the Bureau, unless the Bureau otherwise orders.

(2) A position paper may be amended as specified in Rule 35(c)(4) (relating to disclosures).

(b) A party may withdraw a legal document by filing a motion for leave to withdraw the document. The motion will be granted or denied by the Bureau as a matter of discretion.

Part III—Provider Appeals

Subchapter A. Requests for Hearing, Petitions for Relief and Other Preliminary Matters

Request for Hearings

Rule 18. Request for hearing.

(a) General.

(1) A provider that is aggrieved by an agency action may appeal and obtain review of that action by the Bureau by filing a request for hearing in accordance with these rules.

(2) A provider is aggrieved by an agency action if the action adversely affects the personal or property rights, privileges, immunities, duties, liabilities or obligations of the provider.

(3) When a provider files a request for hearing to contest an agency action, the program office that issued the notice of the agency action is a party to the provider appeal.

(b) *Content.* A request for hearing shall conform to the following:

(1) The request shall set forth the name, address and telephone number of the provider.

(2) The request shall state in detail the reasons why the provider believes the agency action is factually or

legally erroneous, identify the specific issues that the provider will raise in its provider appeal, and specify the relief that the provider is seeking.

(i) If the provider intends to challenge to the validity of a regulation or statement of policy in its provider appeal, the provider shall state such challenge expressly and with particularity, and shall identify the regulation involved.

(ii) If the provider seeks relief from an agency action, in whole or in part, through waiver of the application of a regulation, the provider shall state its waiver request expressly and with particularity and shall identify the regulation involved.

(iii) A provider may not request a declaratory order or that the Department promulgate, amend, or repeal a regulation as relief in a request for hearing. Any such request shall be set forth in a petition for relief.

(3) If the provider received written notice of the agency action by mail or by personal service, the provider shall attach a copy of the written notice to the request for hearing. If the provider received written notice of the agency action by publication in the *Pennsylvania Bulletin*, the provider shall identify date, volume and page number of the *Pennsylvania Bulletin* in the request for hearing.

Rule 19. Timeliness and perfection of requests for hearing.

(a) Except as authorized in Rule 20 (relating to appeal nunc pro tunc), jurisdiction of the Bureau will not attach to a request for hearing unless the request for hearing is in writing and is filed with the Bureau in a timely manner, as follows:

(1) If the program office gives notice of an agency action by mailing the notice to the provider, the provider shall file its request for hearing with the Bureau within 33 days of the date of the written notice of the agency action.

(2) If written notice of an agency action is given in a manner other than by mailing the notice to the provider, a provider shall file its request for hearing with the Bureau within 30 days of the date of the written notice of the agency action.

(b) If a provider files a request for hearing by first-class mail, the United States postmark appearing upon the envelope in which the request for hearing was mailed shall be considered the filing date of that request for hearing. If the provider files a request for hearing in any other manner, or if the envelope in which the provider's request for hearing was mailed bears a postmark other than a United States postmark, the date the request for hearing is received in the Bureau will be considered the filing date.

(c) A provider may amend a request for hearing as a matter of right within 90 days of the filing date of the request for hearing. No other amendments to a request for hearing shall be permitted except as permitted in Rule 20(b) (relating to appeals nunc pro tunc).

(d) Any legal or factual objection or issue not raised in either a request for hearing filed with the time prescribed in subsection (a) or in an amended request for hearing filed within the time prescribed by subsection (c) shall be deemed waived. A general objection to an agency action shall be deemed a failure to object and shall constitute of waiver of all objections and issues relating to an action.

(e) The Bureau will dismiss a request for hearing, either on its own motion or on motion of a program office, if: (1) a provider fails to file its request in accordance with

paragraph (1) of subsection (a); or, (2) the provider's request for hearing fails to conform to the requirements of Rule 18(c) (relating to request for hearing, content) and the 90 day time-period for amendments specified in subsection (c) has expired.

Rule 20. Appeals nunc pro tunc.

(a) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file a request for hearing nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

(b) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file an amendment to a request for hearing nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

(c) The Secretary, upon written motion and for good cause shown, may grant leave to a party to file a request for review of a Bureau determination by the Secretary nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

Petitions

Rule 21. Limitations on the use of Petitions for Relief.

(a) *Waiver requests.* A provider may include a waiver request in a petition for relief only if the regulation that is the subject of that waiver request is not a basis for an agency action involving the provider. If an agency action involving the provider depends, in whole or in part, upon the application of a regulation of the Department, a provider aggrieved by that agency action may only present a waiver request pertaining to that regulation in the context of a request for hearing filed in accordance with Rule 18 (relating to requests for hearing). To the extent that the waiver sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(b) *Request for declaratory relief.* A provider may include a request for declaratory relief in a petition for relief only if the relief sought by the provider would not modify or alter an agency action involving the provider. If the requested relief would modify an agency action involving the provider, the provider can only seek such relief in the context of a request for hearing filed in accordance with Rule 18 (relating to requests for hearing). To the extent that a request for declaratory relief is sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(c) *Request for issuance, amendment, or deletion of regulations.* The sole means by which a provider may formally petition the Department for the issuance, amendment, or deletion of a regulation or statement of policy is by filing a petition for relief.

Supersedeas

Rule 22. General.

(a) The filing of a request for hearing does not act as an automatic supersedeas. However, a provider who has filed a request for hearing may petition the Bureau to grant a supersedeas of the agency action. The Bureau may, upon good cause shown, grant a provider's petition for supersedeas in accordance with Rule 23 (relating to circumstances affecting grant or denial).

(b) A petition for supersedeas must be set forth in writing and may be filed at any time during a provider appeal.

(c) The Bureau will not issue a supersedeas without first conducting a hearing, but a hearing may be limited pursuant to subsection (d). The Bureau, upon motion or sua sponte, may direct that a prehearing conference be held before scheduling or holding a hearing on a supersedeas.

(d) A hearing on a supersedeas, if necessary, shall be held expeditiously—if feasible within 2 weeks of the filing of the petition—taking into account the availability of the presiding officer and program office staff, and taking into account the urgency and seriousness of the problem to which the order or action of the Department applies. If good cause is shown, the hearing shall be held as soon as possible after the filing of the petition.

(e) If necessary to ensure prompt disposition, and at the discretion of the Bureau, a supersedeas hearing may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery or of cross-examination.

(f) The Bureau may impose costs or other appropriate sanctions on a party that files a petition for supersedeas in bad faith or on frivolous grounds.

(g) A supersedeas shall not be granted in a provider appeal commenced by a petition for relief.

Rule 23. Contents of petition for supersedeas.

(a) A petition for supersedeas shall plead facts with particularity and shall be supported by one of the following:

(1) Affidavits, prepared as specified in Pa.R.C.P. 76 and 1035.4 (relating to definitions; and motion for summary judgment), setting forth facts upon which issuance of the supersedeas may depend.

(2) An explanation of why affidavits have not accompanied the petition if no supporting affidavits are submitted with the petition for supersedeas.

(b) A petition for supersedeas shall state with particularity the citations of legal authority the petitioner believes form the basis for the grant of supersedeas.

(c) A petition for supersedeas may be denied upon motion made before a supersedeas hearing or during the proceedings, or sua sponte, without hearing, for one of the following reasons:

(1) Lack of particularity in the facts pleaded.

(2) Lack of particularity in the legal authority cited as the basis for the grant of the supersedeas.

(3) An inadequately explained failure to support factual allegations by affidavits.

(4) A failure to state grounds sufficient for the granting of a supersedeas.

Rule 24. Circumstances affecting grant or denial.

(a) The Bureau, in granting or denying a supersedeas, will be guided by relevant judicial precedent. Among the factors to be considered:

(1) Irreparable harm to the provider.

(2) The likelihood of the provider prevailing on the merits.

(3) The likelihood of injury to the public or other parties.

(b) A supersedeas shall not be issued if injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect. If state law or federal law or regulation require that an action take effect prior to the final determination of an appeal, injury to the public health, safety or welfare shall be deemed to exist.

(c) In granting a supersedeas, the Bureau may impose conditions that are warranted by the circumstances, including the filing of a bond or other security.

Intervention

Rule 25. Filing of petitions to intervene.

Petitions to intervene and notices of intervention in a provider appeal may be filed at any time following the filing of a request for hearing but in no event later than 60 days from the filing date on the provider's request for hearing, unless for extraordinary circumstances and for good cause shown, the Bureau authorizes a late filing.

Answers

Rule 26. Answers generally.

(a) No answer to a pleading is required.

(b) Answers to legal documents, if permitted or required by these Rules, shall be filed with the Bureau within 20 days after the date of service of the legal document, unless: (1) a different period is specifically required by these rules; or (2) for cause, the Bureau with or without motion shall prescribe a different time, but in no case may an answer be required in less than 10 days after the date of service.

(c) Answers shall be in writing and conform to the requirements of these Rules. Answers shall admit or deny specifically and in detail each material fact asserted in the legal document answered and shall state clearly and concisely the facts and law relied upon.

Rule 27. Answers to petitions to intervene.

(a) A party may file an answer to a petition to intervene, and in default thereof, may be deemed to have waived an objection to the granting of the petition.

(b) Answers shall be filed within 20 days after the date of service of the petition, unless for cause the Bureau with or without motion shall prescribe a different time.

Consolidation

Rule 28. Consolidation of Provider Appeals.

(a) *Individual provider appeals.* Each provider that wishes to an agency action shall file an individual request for hearing in its own name, without joining any other provider as a joint provider.

(b) *Consolidation by Motion.* The Bureau, on timely motion, may order that a provider appeal be consolidated with one or more other provider appeals if the Bureau determines that the provider appeals in question involve substantially similar or materially related issues of law or fact and that consolidation is otherwise appropriate.

(c) *Appropriateness.* For purposes of this rule, consolidation is appropriate if it will not prejudice the ability of the non-moving party to perform adequate discovery or to adequately present its claim or defense, and if it will not unduly delay the adjudication of the earlier-filed matter.

(d) *Motions.* No provider appeal shall be consolidated except upon motion filed by one or more parties. In addition to the general requirements for motions set forth in Rule 39, any motion for consolidation shall: (1) identify

the issues of law raised in each provider appeal and indicate the extent to which each is shared or distinct; (2) identify the material facts that serve as a basis for each appeal and indicate the extent to which each of these facts is shared or distinct; and (3) the justifications or advantages that support consolidation.

(e) *Answers.* In addition to the general requirements for answers to motions set forth in Rule 25 (relating to filing of petition to intervene), any answer to a motion for consolidation shall explain how consolidation would, if allowed, adversely affect the non-moving party's ability to conduct and complete discovery, or its ability to present its claims or defenses.

(f) *Deadline for Motions to Consolidate.* A motion to consolidate shall be untimely as to a provider appeal if it is filed after the date set for the conclusion of discovery in that provider appeal. An untimely motion to consolidate shall only be granted with the consent of all non-moving parties.

(g) *Consent of Other Providers.* In the event that a provider seeks to consolidate its provider appeal with a provider appeal filed by a different provider, the motion for consolidation shall be deemed to be opposed by the other provider unless an affirmative statement to the contrary is set forth in the motion.

(h) *Service.* A motion for consolidation and any answer thereto shall be served on each person that is a party to any of the provider appeals for which consolidation is sought.

(i) *Effect of Consolidation Upon Discovery.* If the Bureau grants a provider's motion to consolidate, the discovery, if any, available to the all providers in the consolidated appeals shall, in the aggregate, comply with the limitations specified in Rule 36(c) (relating to limitations).

Amendments And Withdrawals Of Provider Appeals

Rule 29. Amendments of Pleadings.

(a) No amendments to a request for hearing shall be permitted except as specified in Rule 19(c) (relating to timeliness and perfection of appeal) and Rule 20(b) (relating to appeals nunc pro tunc).

(b) A petition for relief may be amended in accordance with 1 Pa. Code § 35.48 (relating to amendments of pleadings generally); except that no amendment to a petition for relief may be filed within 30 days proceeding the commencement of, or during a hearing on the petition unless directed or permitted by the Secretary or the presiding officer after all parties have been permitted to be heard thereon.

Rule 30. Termination of provider appeals.

(a) A provider appeal may be terminated prior to adjudication by one of the following:

(1) Withdrawal of the pleading in accordance 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

(2) A written Stipulation of Settlement executed by the parties and filed with and approved by the Bureau.

(b) When a request for hearing is withdrawn prior to adjudication, the withdrawal shall be with prejudice as to all issues that were or could have been raised in the appeal, unless otherwise indicated by the Bureau.

Subchapter B. Prehearings Procedures and Hearings

General

Rule 31. Waiver of hearings.

A hearing need not be held if:

- (a) The provider waives its right to hearing; or
- (b) The parties stipulate the material facts or agree to submit direct and rebuttal testimony or documentary evidence in affidavit form (sworn or affirmed on personal knowledge) or by deposition; or
- (c) The Bureau determines that the material facts are not in dispute and the Bureau grants a dispositive motion dismissing the provider appeal or determining all of the issues raised in the appeal.

Rule 32. Expedited Disposition Procedure for Certain Appeals.

(a) This rule shall apply to all provider appeals involving the denial of claims for payment through the prior authorization process, the denial of requests for pre-certification, the recovery of overpayments or improper payments through the utilization review process, the denial of claims upon prepayment review, the denial of claims for payment pursuant to 55 Pa. Code 1101.68 (relating to invoicing for services), the denial, termination or suspension of an exceptional DME grant (as defined in 55 Pa. Code § 1187.51 (relating to definitions)), and the denial of a program exception request.

(b) A request for hearing in a provider appeal subject to this rule must: (1) be submitted in writing to the Bureau within the time limits specified in accordance with Rule 19(a) (relating to timeliness and perfection of appeal); (2) include the information specified in Rule 18 (b) (relating to request for hearing; and, must include all relevant supporting documentation. The provider shall send a copy of its request for hearing to the program office issuing the notice of the agency action at the same time it files its request with the Bureau.

(c) Unless the information has already been exchanged, the provider and the program office shall exchange any document that it will introduce as an exhibit and a list of any persons, including medical or other experts, that it will call as a witness at the hearing.

(d) The Bureau will schedule a hearing taking into due consideration the availability of expert witnesses.

(e) The following rules do not apply to provider appeals subject to this rule:

- (1) Rule 8 (relating to title).
- (2) Rule 9 (relating to form).
- (3) Rule 11 (relating to verification).
- (4) Rule 14(a)(2) (requiring service on the Department's Office of General Counsel).
- (5) Rule 15 (relating to proof of service).
- (6) Rule 16 (relating to certificate of service).
- (7) Rule 33 (relating to prehearing procedure).
- (8) Rule 35 (relating to disclosures).
- (9) Rule 36 (relating to methods to discover additional information).
- (10) Rule 37 (relating to supplementing disclosure and discovery responses).

(11) Rule 38 (relating to signing of disclosures, discovery requests, responses and objections)

(12) Rule 41 (relating to discovery motions).

(13) Rule 42 (relating to dispositive motions), except for a motion to dismiss based upon timeliness.

(14) Rule 44 (relating to voluntary mediation).

(15) Rule 51 (relating to posthearing briefs).

(f) Upon motion of a party, and for good cause shown, the Bureau may order that a provider appeal identified in subsection (a) be exempt from this rule or may order that one or more of the rules identified in subsection (e) apply in whole or in part to the appeal.

(g) Upon joint motion of the parties to a provider appeal, the Bureau may order that this rule applies to a provider appeal not identified in subsection (a).

(h) A motion to exempt an appeal from this rule under subsection (f), and a joint motion to apply this rule to an appeal under subsection (g) may be filed with the request for hearing but shall be filed no later than 30 days from the filing date of the request for hearing in the provider appeal.

Prehearing Procedures And Prehearing Conferences

Rule 33. Prehearing procedure in certain provider appeals.

(a) Upon the filing of a request for hearing, the Bureau will issue a prehearing order specifying that:

(1) The parties shall make disclosures in accordance with Rule 35 (relating to disclosures).

(2) All discovery requests shall be served within 90 days of the date of the prehearing order and that all discovery shall be concluded within 120 days of the date of the prehearing order.

(3) All motions to compel discovery shall be filed with 30 days of the close of discovery;

(4) Any other miscellaneous prehearing motions, including motions in limine shall be filed within 60 days of the date of filing of the program office's position paper; and,

(5) Dispositive motions shall be filed within 60 days of the date of the filing of program office's position paper.

(b) The parties may, within 30 days of the date of the prehearing order, submit a Joint Proposed Case Management Order to the Bureau that proposes alternative dates for completion of the matters specified in paragraphs (1)—(5) of subsection (a), or that agrees to discovery beyond the limitations set forth in Rule 36(c)(1)—(3) (relating to methods to discover additional information).

(c) The Bureau may issue subsequent prehearing orders incorporating the alternate dates and discovery limitations proposed by the parties or specifying other dates and discovery limitations that the Bureau deems appropriate.

Rule 34. Conferences.

(a) The Bureau, on its own motion or on motion of a party, may hold a conference either prior to or during a hearing for the purpose of considering offers of settlement, adjustment of the proceeding or any issue therein, or other matters to expedite the orderly conduct and disposition of a hearing.

(b) A stipulation of the parties or order of the Bureau as a result of the conference shall be binding upon the parties.

Disclosures and Discovery

Rule 35. Disclosures.

(a) *Duty of Disclosure.* A party to a provider appeal commenced by a request for hearing must, without awaiting a discovery request, disclose information to each other party as specified in this section.

(b) *Mandatory Initial Disclosures:*

(1) The program office shall disclose:

(i) The name, title, business address and telephone number of each staff person directly involved in the agency action; and, if different, the name, title, business address and telephone number of any officials or staff designated to testify on its behalf regarding the agency action and the issues on which designated person will testify; in the case of an audit appeal, the program office will at a minimum identify every auditor involved in the audit and every audit supervisor and audit manager who reviewed the audit report; and,

(ii) a copy of, or a description by category and location of, all documents, data compilations, and tangible things, not privileged or protected from disclosure, that were relied upon in issuing the agency action, or that formed the basis for the agency action.

(2) The provider shall disclose:

(i) The name, title, business address, and telephone number of every person who provided facts, opinions, or other information that were relied upon in drafting the request for hearing or petition for supersedeas, if any, or that support or form the basis for, the allegations contained therein; and, and, if different, the name, title, business address and telephone number of any officials or staff designated to testify on its behalf regarding the agency action and the issues on which designated person will testify; and,

(ii) A copy of, or a description by category and location of, all documents, data compilations, and tangible things, not privileged or protected from disclosure, that were relied upon in drafting the request for hearing or petition for supersedeas, if any, or that support or form the basis for, the allegations contained therein; and, in a case where a provider alleges in its request for hearing that its costs or its claim for payment is supported by documents, the provider shall disclose the supporting documents.

(3) The parties shall make their initial mandatory disclosures within 45 days of the date of the Bureau's initial prehearing order, unless a different time is set by stipulation of the parties or by the prehearing order of the Bureau.

(4) A party shall make its initial disclosures based on the information in its possession or otherwise then reasonably available to it. A party shall not be excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(5) An opposing party has no obligation to respond to a discovery request made pursuant to Rule 36 (relating to methods to discover additional information) until the party that propounded the request has made its mandatory initial disclosures in compliance with this subsection. A provider whose initial mandatory disclosure identifies documents in the possession of the Department or pro-

gram office but fails to provide copies of the provider's own records or documents in support of one or more of the issues raised in the provider's request for hearing shall not be in compliance with this subsection.

(c) *Position papers.*

(1) *General requirements:*

(i) The provider shall file its position paper and required documentation with the Bureau and serve it on the program office within 60 days of the close of discovery or such other date as may be specified in the Bureau's prehearing order. If the provider fails to meet the position paper due date or fails to supply the Bureau with the required documentation, the Bureau will dismiss the provider's appeal.

(ii) The program office shall file its position paper with the Bureau and serve it on the provider within sixty (60) days of the date of service of provider's position paper or such other date as may be specified in the Bureau's prehearing order. If the program office fails to meet the position paper due date, the Bureau will schedule the case from hearing and will notify the Chief Counsel of the Department.

(2) *Extensions.* The Bureau disfavors requests for extensions of time to file position papers. The Bureau may grant an extension if: (i) a party submits a written request for extension; (ii) the request is received by the Bureau in time for it to review the matter prior to the due date; and, (iii) the party establishes that extraordinary conditions exist that warrant an extension. Failure to complete discovery before the due date of the position paper will ordinarily not be considered sufficient cause to extend the deadline, unless due to the non-cooperation of the other side. A request for extension should be considered denied unless the Bureau affirmatively grants the extension in writing before the papers are due.

(3) *Content of position papers.*

(i) *Provider.* For each issue identified in its request for hearing or amended request for hearing, the provider's position paper shall state the relevant facts and present arguments setting forth the provider's position. Specifically, the provider shall include for each issue: a summary of the pertinent facts and circumstances, citations to the relevant statutory provisions, regulations, and other controlling authorities, the monetary amount in dispute, if any, and an explanation showing how the amount was computed and any other relief sought by the provider in connection with the issue. In addition, the provider shall provide for each issue the name and business address of every witness whose testimony the provider will present and a copy of every document that the provider will offer into evidence to support its position with respect to the issue.

(ii) *Program office.* For each issue identified in the provider's position paper, the program office's position paper shall state whether the program office accepts or disputes the provider's summary of the pertinent facts and circumstances, the provider's citations to the relevant statutory provisions, regulations, and other controlling authorities, and the provider's computation of the monetary amount in dispute. If the program office disputes the facts, citations or monetary amount, the program office shall provide a counterstatement of the items in dispute. The program office's position paper must also identify any additional issues not addressed by the provider that the program office believes should be determined by the Bureau. For each such issue, the program office shall include a summary of the pertinent facts and

circumstances, and citations to the relevant statutory provisions, regulations, and other controlling authorities. In addition, the program office shall provide the name and business address of every witness whose testimony the program office will present and a copy of every document that the program will offer into evidence to support its position on each issue identified in its position paper.

(iii) *Statement regarding expert opinions.* For each issue, a party's position paper shall include a section that addresses the party's reliance upon an expert. The party shall state whether its position depends, in whole or in part, upon the judgment, opinion, or testimony of a person who, if called to testify, would be called as an expert. Where a party's position depends, at least in part, upon the judgment, opinion, or testimony of such a person, the provider's position paper shall include a "statement of expert opinion." Consistent with the requirements of Pa.R.C.P. No. 4003.5 (relating to discovery of expert testimony, trial preparation material), and unless the Bureau orders to the contrary, each such statement shall: (A) identify the expert by name and address; (B) state the subject matter on which the expert is expected to testify; (C) identify the substance of the facts and opinions to which the expert is expected to testify; (D) summarize the grounds for each opinion to which the expert is expected to testify; and (E) be signed by the expert.

(4) *Amendments.* The Bureau may permit a party to amend a position paper upon motion of the party and for good cause shown except that no amendment to a position paper shall be permitted within 30 days of the commencement of the hearing in the provider appeal.

(5) *Penalties for Noncompliance.* A party shall not be permitted to offer the testimony of any witness at a hearing on a provider appeal unless the party disclosed the identity of the witness in the party's position paper. A party shall not be permitted to introduce a document into evidence at a hearing on a provider appeal unless party identified the document as an exhibit and served the other parties to the provider appeal with a copy of the document at the time the party filed its position paper with the Bureau.

Rule 36. Methods to Discover Additional Information.

(a) *Authorized Forms of Discovery.* Once the time period for mandatory disclosures has elapsed, a party to a provider appeal commenced by a request for hearing may obtain discovery by one or more of the following methods: interrogatories, requests for the production of documents, expert reports, requests for admissions and depositions of witnesses and designees of parties.

(b) General Scope of Discovery.

(1) Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party in a provider appeal, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(2) Except to the extent inconsistent with or as otherwise provided in this Order, discovery shall be governed by the relevant Pa.R.C.P. applicable to the form of discovery authorized by this Order. When the term "court" is used in the Pa.R.C.P., "Bureau" is to be

understood; when the terms "prothonotary" or "clerk of court" are used in the Pa.R.C.P., "Formal Docketing Unit" is to be understood.

(c) *Limitations.* In addition to the general limitation on the scope of discovery and deposition set forth in Pa.R.C.P. 4011 (relating to limitation of scope of discovery and deposition), the limitations on discovery in paragraphs (1)–(4) apply in provider appeals.

(1) *Interrogatories.* Interrogatories to a party, as a matter of right, shall not exceed ten in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence each shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. If counsel for a party believes that more than ten interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional interrogatories may file a motion with the Bureau showing the necessity for relief.

(2) *Requests for Admissions.* Request for admissions to a party, as a matter of right, shall not exceed ten in number. All requests for admissions, including subdivisions of one numbered request, shall be construed as separate request. If counsel for a party believes that more than ten requests for admission are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional requests for admissions may file a motion with the Bureau showing the necessity for relief.

(3) *Depositions by Oral or Written Examination.* Depositions, as a matter of right, shall not exceed three in number. A deposition of a person shall not be permitted if the person has already been deposed in the appeal. If counsel for a party believes that more than three depositions or that the deposition of a person who has already been deposed are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional depositions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional depositions may file a motion with the Bureau showing the necessity for relief.

(4) Deposition of the Secretary and Senior Department Officials.

(i) Unless the Secretary has been identified as a witness by the program office, a party may not depose the Secretary.

(ii) Unless a senior department official has been identified as a witness by the program office, a party may not depose a senior department official regardless of the number of depositions taken, except upon order of the Bureau which is based upon a finding that all of the following apply:

(A) The senior department official was personally involved in the disputed agency action.

(B) The senior department official has knowledge which is not privileged.

(C) The senior department official has knowledge which is not shared by a subordinate official or employee.

(d) *Protective Orders.* The Bureau may issue protective orders limiting or precluding discovery in accordance with subsection (c) or as specified in Pa.R.C.P. 4012 (relating to protective orders).

(e) *Timing and Sequence of Discovery.* Unless the Bureau upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

Rule 37. Supplementing Disclosures and Responses.

(a) *Disclosures.* A party has a duty to supplement or correct a disclosure under Rule 35 (relating to disclosures) to include information thereafter acquired if ordered by the Bureau or if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) *Responses to Discovery Requests.* A party is under a duty to supplement responses made to discovery requests as set forth in Pa.R.C.P. 4007.4 (relating to supplementing responses).

Rule 38. Signing of Disclosures, Discovery Requests, Responses, and Objections.

(a) Every disclosure shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the signor's address.

(1) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(i) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(2) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making

the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the Bureau, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Motions

Rule 39. General.

(a) This Rule applies to all motions made in a provider appeal, except oral motions made during the course of a hearing.

(b) Motions and responses to motions shall be in writing, signed by a party or its attorney and shall be accompanied by a proposed order.

(c) Unless the time is extended by the Bureau, a response to a dispositive motion shall be filed within 30 days of service of the motion, and a response to any other motion shall be filed within 20 days of service of the motion.

(d) Except in the case of a dispositive motion, the Bureau will deem a party's failure to respond to a motion to be the party's lack of opposition to the motion.

(e) Except for a response to dispositive motion, the moving party may not file a reply to a response to its motion, unless the Bureau orders otherwise.

(f) Action on motions.

(1) The Bureau will rule on dispositive motions within 60 days after the moving party's reply to the non-moving party's response, if a reply is filed. If the moving party does not file a reply, the Bureau will rule on a dispositive motion within 60 days after the date on which the non-moving party's response is due.

(2) The Bureau will rule on motions other than dispositive motions within 30 days after the date on which the non-moving party's response is due.

(3) Notwithstanding paragraphs (1) and (2) of subsection (f), the Bureau will rule on all outstanding pre-hearing motions no later than 20 days prior to the commencement of the hearing.

Rule 40. Procedural motions.

(a) This Rule applies to motions in a provider appeal that pertain to the procedural aspects of a case, including motions for continuance, for expedited consideration, for extensions of time in which to file documents and for stay of proceedings.

(b) Procedural motions shall contain a statement indicating the nonmoving party's position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position.

(c) If all parties consent to the relief requested, the request may be embodied in a letter, provided the letter indicates the consent of the other parties.

(d) Requests for extensions or continuances, whether in letter or motion form, shall be accompanied by a proposed order.

(e) Procedural motions and responses may not be accompanied by supporting memoranda of law unless otherwise ordered by the Bureau.

Rule 41. Discovery motions.

(a) This Rule applies to motions filed to resolve disputes arising from the conduct of discovery under Rule 36 (relating to methods to discover additional information).

(b) A motion to compel discovery shall contain as exhibits the discovery requests and answers giving rise to the dispute.

(c) A party may file a memorandum of law in support of its discovery motion or its response to a discovery motion. The supporting memorandum of law shall be filed at the same time the motion or response is filed.

Rule 42. Dispositive motions.

(a) This Rule applies to dispositive motions in a provider appeal.

(b) Motions for summary judgment or partial summary judgment and responses to such motions shall conform to Pa.R.C.P. 1035.1-1035.5 (relating to motion for summary judgment).

(c) Dispositive motions shall be accompanied by a supporting memorandum of law. The Bureau may deny a dispositive motion if a party fails to file a supporting memorandum of law.

(d) An affidavit or other document relied upon in support of a dispositive motion, response or reply, that is not already a part of the record, shall be attached to the motion, response or reply or it will not be considered by the Bureau in ruling thereon.

Rule 43. Miscellaneous motions.

(a) This section applies to a motion in a provider appeal not otherwise addressed in Rules 66—69 (relating to procedural motions; discovery motions; and dispositive motions), including a motion in limine, a motion to strike and a motion for recusal.

(b) A memorandum of law in support of a miscellaneous motion or response to a miscellaneous motion shall be filed with the miscellaneous motion or response.

Mediation

Rule 44. Voluntary mediation.

(a) Upon request by all the parties, the Bureau may stay a provider appeal commenced by a request for hearing for up to 120 days to allow the parties to utilize voluntary mediation services through the Office of General Counsel Mediation Program.

(b) The parties shall file their request for stay with the Bureau at least 14 days before initiation of hearings by the Bureau.

(c) At the end of the initial stay, the parties shall jointly file a report, prepared and signed by the mediator, which sets forth the history of mediation activities conducted. The parties may request an additional stay if necessary to complete the mediation process.

(d) The grant of an additional stay for mediation is in the Bureau's discretion and the Bureau may impose limitations the Bureau deems appropriate.

(e) A settlement reached by the parties as a result of voluntary mediation shall be submitted to the Bureau for approval under Rule 30 (relating to termination of provider appeals).

(f) Only a signed settlement agreement shall be binding and it shall bind only the parties signing it.

(g) A party's participation in voluntary mediation may not be used as evidence in a proceeding before the Bureau. Communications between the parties during the mediation period shall be regarded as offers of settlement and are neither discoverable nor admissible as evidence in a proceeding before the Bureau.

Hearings

Rule 45. Initiation of hearings.

(a) If, after the Bureau has ruled on any dispositive motions, a hearing is required to determine any remaining issues, the Bureau will, after consultation with the parties, schedule a formal evidentiary hearing and send a notice of hearing to all parties to the provider appeal.

(b) A hearing may, if permitted by the rules or by agreement of the parties, be conducted via telephone.

Rule 46. Continuance of hearings.

A hearing may not be continued except for compelling reasons. Requests for continuances shall be submitted to the Bureau in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

Rule 47. Burden of proof, order of procedure.

(a) The provider has the burden of proof to establish its case by a preponderance of the evidence, and is required to make a prima facie case by the close of its case-in-chief. The provider shall open and close, unless otherwise directed by the presiding officer, upon a determination that the evidence is peculiarly within the knowledge or control of another party or participant, in which case the order of presentation may be varied by the presiding officer.

(b) Each party shall have the right to an opening statement, presentation of evidence, cross-examination, objection, motion and argument, and closing argument.

(c) A pleading shall, without further action, be considered part of the record. In no event, however, shall a pleading be considered as evidence of any fact other than that of the filing thereof, unless offered and received into evidence under these rules.

Subchapter C. Evidence and Witnesses

General

Rule 48. Written testimony.

(a) Written testimony of a witness, including an expert witness, on numbered lines in question and answer form, may be admitted into evidence in a provider appeal provided the witness is present for cross-examination at the hearing.

(b) Written testimony shall be filed concurrently with the proffering party's position paper unless a different time is prescribed by the Bureau. Objections to written testimony which can be reasonably anticipated prior to hearing shall be in writing and filed within the time prescribed for pre-hearing motions in limine, unless otherwise ordered by the Bureau.

(c) If a party desires to file written testimony prior to the close of the record, it may do so only upon motion approved by the Bureau for good cause. This approval shall include the scope of the written testimony and the time for filing the testimony and service upon opposing counsel.

Subpoenas

Rule 49. Subpoenas.

(a) Except as otherwise provided in this chapter or by order of the Bureau, requests for subpoenas and subpoenas shall be governed by Pa.R.C.P. 234.1-234.4 (relating to subpoena to attend and testify, subpoena, issuance, service, compliance fees, prisoners, notice to attend, notice to produce, subpoena, notice to attend, notice to produce, relief from compliance, motion to quash) and 234.6-234.9 (relating to form of subpoena, form of notice to attend, form of notice to produce, notice and acknowledgment of receipt of subpoena by mail). When the term "court" is used in Pa.R.C.P. "Bureau" is to be understood; when the terms "Prothonotary" or "clerk of court" are used in Pa.R.C.P. "Formal Docketing Unit" is to be understood.

(b) Proof of service of the subpoena need not be filed with the Bureau.

Subchapter E. Presiding Officers

Rule 50. Independence, Ex parte Communications.

(a) The presiding officers shall act independently of employees or public officials of the Department whose actions are subject to review before the Bureau.

(b) The presiding officers shall not engage in ex parte communications concerning a hearing with any party to the hearing.

Subchapter F. Posthearing Procedures

Briefs

Rule 51. Post hearing briefs.

(a) The initial post hearing brief of each party shall be as concise as possible and may not exceed 50 pages. An initial post hearing brief shall contain proposed findings of fact, with references to the appropriate exhibit or page of the transcript, an argument with citation to supporting legal authority, and proposed conclusions of law.

(b) The provider shall file its initial post hearing brief first and within the time specified by the presiding officer. The program office shall file its initial post hearing brief within 30 days of the date of service of the provider's brief.

(c) The provider may file a reply brief within 20 days of service of the program office post hearing brief. A reply brief shall be as concise as possible and may not exceed 25 pages.

(d) Longer briefs and surreply briefs may be permitted at the discretion of the presiding officer.

(e) An issue which is not argued in a post hearing brief shall be deemed waived.

Subchapter G. Agency Action.

Decisions

Rule 52. Determinations and Recommendations by the Bureau.

(a) The Bureau will conduct a de novo review of all factual and legal issues that are timely raised and properly preserved in a provider appeal. Except as provided in subsection (b) and (c), the Bureau will issue a determination adjudicating all contested issues of law and fact within its jurisdiction, and issue any appropriate order decree or decision.

(b) In the event that a request for hearing includes a waiver request, the Bureau will make a written recommendation for consideration by the Secretary proposing that the waiver be either granted or denied and stating

the Bureau's reasoning in support of its position. If the request for hearing raises factual and legal issues in addition to the waiver request, the Bureau will issue its written recommendation together with its final determination adjudicating the remaining factual and legal issues, as specified in subsection (d). If the request for hearing does not raise any other issues, the Bureau's written recommendation on the waiver request will be issued in the time limits and served on the parties as specified in subsection (d).

(c) In a provider appeal commenced by a petition for relief, the Bureau will make a written recommendation for consideration by the Secretary that sets forth proposed findings of fact and conclusions of law and a recommends that the relief sought in the petition be either granted or denied and states the Bureau's reasoning in support of its position. The Bureau's written recommendation will served on all parties to the proceeding or their representatives.

(d) The Bureau will issue a determination in a provider appeal within thirty days of the filing of all post hearing briefs, or, if the parties waive the filing of post hearing briefs, within thirty days of the close of the record or receipt of the transcript, whichever is later. The Bureau will serve a copy of its determination on all parties to the proceeding or their representatives.

(e) A party who is aggrieved by a determination of the Bureau may request the Secretary to review the determination pursuant to Rule 55 (relating to review of bureau determinations). For purposes of this rule a program office shall be deemed to be aggrieved if the Bureau determination sustains the provider's appeal in whole or in part; if the Bureau determination interprets a statute, regulation or other statement of policy or bulletin applied by the program office in a manner inconsistent with the interpretation of that office; or if the Bureau determination alters a policy of that office or purports to impose a new or different rule or policy on that office.

(f) The Secretary will review written recommendations of the Bureau issued pursuant to subsections (b) or (c) pursuant to Rule 56 (review of bureau recommendations).

Subchapter H. Reopening of Record

Rule 53. Reopening of record prior to adjudication.

(a) After the conclusion of the hearing on the merits in a provider appeal and before the Bureau issues an adjudication, the Bureau, upon its own motion or upon a motion filed by a party, may reopen the record as provided in this section.

(b) The record may be reopened upon the basis of recently discovered evidence when all of the following circumstances are present:

(1) Evidence has been discovered which would conclusively establish a material fact of the case or would contradict a material fact which had been assumed or stipulated by the parties to be true.

(2) The evidence is discovered after the close of the record and could not have been discovered earlier with the exercise of due diligence.

(3) The evidence is not cumulative.

(c) The record may also be reopened to consider evidence that has become material as a result of a change in legal authority occurring after the close of the record. A motion to reopen the record on this basis shall specify the change in legal authority and demonstrate that it applies

to the matter pending before the Bureau. Such motion need not meet the requirements of paragraphs (2) and (3) of subsection (d).

(d) A motion seeking to reopen the record shall:

(1) Identify the evidence that the moving party seeks to add to the record.

(2) Describe the efforts that the moving party had made to discover the evidence prior to the close of the record.

(3) Explain how the evidence was discovered after the close of the record.

(e) A motion filed under subsection (b) shall be verified and all motions to reopen shall contain a certification by counsel that the motion is being filed in good faith and not for the purpose of delay. The motion shall be served upon the parties to the proceedings.

Reconsideration and Review by the Secretary

Rule 54. Reconsideration of interlocutory orders.

(a) A motion for reconsideration of an interlocutory order or ruling by the Secretary shall be filed within 10 days of the order or ruling. The petition must demonstrate that extraordinary circumstances justify consideration of the matter by the Secretary. A party may file a memorandum of law at the time the motion or response is filed.

(b) A copy of the motion shall be served upon the parties. A party wishing to file an answer may do so within 10 days of service or as ordered by the Bureau.

(c) The failure of a party to file a motion under this section will not result in a waiver of any issue.

Rule 55. Review of Bureau Determinations.

(a) A determination of the Bureau will be deemed the final adjudication of the Department effective upon expiration of the 30-day time period specified in subsection (b) unless an aggrieved party requests review by the Secretary within that 30-day time period.

(b) A request for review must be filed within 30 days of the mailing date of the Bureau determination. An untimely request for review shall be dismissed as of course unless the filing party can satisfy the requirements of Rule 20 (relating to appeals *nunc pro tunc*).

(c) A request for review shall be in writing and shall state concisely the alleged errors in the Bureau determination and shall identify the particular relief sought. If the party requesting review is seeking relief by reason of matters that have arisen since the hearing and Bureau determination, or by reason of a matter that would arise from compliance the party shall specifically identify those matters in its request.

(d) If an aggrieved party timely requests review of a Bureau determination, the Secretary may enter an order granting or denying the request for review within 30 days of receipt of the request. No party has a right to have a Bureau determination reviewed by the Secretary, but only a right to request such review. The decision to grant or deny such a request lies within the discretion of the Secretary.

(e) If the Secretary enters an order denying a request for review within 30 days of receipt of the request, the Bureau's determination shall be deemed the final adjudication of the Department effective the date of the order denying review.

(f) If the Secretary fails to act on a request for review within thirty days of receipt of the request, the request for review shall be deemed denied, and the Bureau's determination shall be deemed the final adjudication of the Department effective the date on which review is deemed denied.

(g) No answers to a request for review will be considered by the Secretary unless the Secretary grants review. If, and to the extent the Secretary grants review, a response in the nature of an answer may be filed by any party, other than the party requesting review. The response shall be confined to the issues upon which the Secretary has granted review.

(h) If the Secretary grants review, the Secretary will enter a final order within 180 days of the date of the order granting review. The final order may affirm, reverse or modify the findings of fact, conclusions of law or the relief set forth in the Bureau's determination, and may, in order to promote fairness and the proper administration of the Medical Assistance Program, waive compliance with program requirements.

(i) If the Secretary fails to act within 180 days of the order granting review, the determination of the Bureau shall be deemed approved by, and the final order of, the Secretary effective the date it is deemed approved.

Rule 56. Review of Bureau Recommendations.

(a) The Secretary will review and issue a final order adopting, rejecting or modifying a recommendation of the Bureau issued pursuant to Rule 52(b) or (c) (relating to determinations and recommendations by the bureau).

(b) Any party to the provider appeal in which the Bureau's recommendation was issued may file a brief with the Secretary setting forth its position regarding the recommendation.

(1) If the Bureau's recommendation was issued pursuant to Rule 52 (b) (relating to determinations and recommendations by the bureau), the party must file its brief at the same time the party requests for review of the Bureau's related determination under Rule 55 (relating to review of bureau determinations) or, if the party is not seeking review of the Bureau's determination, within 30 days of the date of the mailing date of the Bureau recommendation.

(2) If the Bureau recommendation was issued pursuant to Rule 52 (c) (relating to determinations and recommendations by the bureau), the party must file its brief within 30 days of the date of the mailing date of the Bureau recommendation.

(3) A brief supporting or opposing the Bureau's recommendation shall state concisely the reasons for the party's position on the recommendation, shall set forth any proposed findings of fact and conclusions of law for consideration by the Secretary and shall specify what relief, if any, should be granted or denied by the Secretary. The brief shall not exceed 25 pages.

(c) The Secretary's final order regarding a recommendation issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau) will be issued no later than:

(1) The date on which the Secretary issues a final order if review is granted under Rule 55 (relating to review of bureau determinations); or

(2) 180 days from the date of receipt of the written recommendation, if review is not granted under Rule 55 (relating to review of bureau determinations).

(d) If the Secretary does not issue a final order regarding a recommendation issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau) within the time frames specified in subsection (c), the recommendation of the Bureau shall be deemed adopted by, and the final order of, the Secretary effective the date it is deemed adopted.

Rule 57. Appeals.

A provider aggrieved by a final adjudication of the Department issued pursuant to Rule 55 (a), (e) or (f)

(relating to review of bureau determinations), or a final order of the Secretary issued pursuant to Rule 55 (h) or (i) (relating to review of bureau determinations) or Rule 56(a) or (d) (relating to review of bureau recommendations) may petition for judicial review in accordance with 2 Pa.C.S. Ch.7 subch.11 (relating to judicial review of commonwealth agency action).

Appendix A

**GRAPP
Section**

Title of GRAPP Section

Status of GRAPP Section

Chapter 31

31.1	Scope of part	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 1 and 2.
31.2	Liberal construction	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 1 and 2.
31.3	Definitions	This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 3.
31.4	Information and special instructions	This section of the GRAPP remains applicable to provider appeals.
31.5	Communications and filing generally	This section of the GRAPP remains applicable to provider appeals.
31.6	Amendments to rules	This section has been superseded pursuant to Rule 2(b) and Rule 4.
31.11	Timely filing required	This section has been superseded pursuant to Rule 2(b) and Rule 6.
31.12	Computation of time	This section of the GRAPP remains applicable to provider appeals.
31.13	Issuance of agency orders	This section of the GRAPP remains applicable to provider appeals.
31.14	Effective dates of agency orders	Subsection (a) of this section is superseded pursuant to Rule 2(b); subsection (b) of this section remains applicable to provider appeals.
31.15	Extensions of time	This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 7.
31.21	Appearance in person	This section of the GRAPP remains applicable to provider appeals.
31.22	Appearance by attorney	This section of the GRAPP remains applicable to provider appeals.
31.23	Other representation prohibited at hearings	This section of the GRAPP remains applicable to provider appeals.
31.24	Notice of appearance	This section of the GRAPP remains applicable to provider appeals.
31.25	Form of notice of appearance	This section of the GRAPP remains applicable to provider appeals.
31.26	Service on attorneys	This section of the GRAPP remains applicable to provider appeals.
31.27	Contemptuous conduct	This section of the GRAPP remains applicable to provider appeals.
31.28	Suspension and disbarment	This section of the GRAPP remains applicable to provider appeals.

Chapter 33

33.1	Title	This section has been superseded pursuant to Rule 2(b) and Rule 8.
33.2	Form	This section has been superseded pursuant to Rule 2(b) and Rule 9.
33.3	Incorporation by reference	This section has been superseded pursuant to Rule 2(b) and Rule 10.
33.4	Single pleading or submittal covering more than one matter	This section of the GRAPP remains applicable to provider appeals.
33.11	Execution	This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 38.
33.12	Verification	This section has been superseded pursuant to Rule 2(b) and Rule 11.
33.15	Number of copies	This section has been superseded pursuant to Rule 2(b) and Rule 12.

33.21	Filing fees	This section has been superseded pursuant to Rule 2(b).
33.22	Mode of payment of fees	This section has been superseded pursuant to Rule 2(b).
33.23	Copy fees	This section of the GRAPP remains applicable to provider appeals.
33.31	Service by the agency	This section has been superseded pursuant to Rule 2(b) and Rules 15 and 16.
33.32	Service by a participant	This section has been superseded pursuant to Rule 2(b) and Rule 15 and 16.
33.33	Effect of service upon an attorney	This section of the GRAPP remains applicable to provider appeals.
33.34	Date of service	This section of the GRAPP remains applicable to provider appeals.
33.35	Proof of service	This section has been superseded pursuant to Rule 2(b) and Rules 15, 16, and 38.
33.36	Form of certificate of service	This section has been superseded pursuant to Rule 2(b) and Rules 15, 16, and 38.
33.37	Number of copies	This section has been superseded pursuant to Rule 2(b) and Rule 12.
33.41	Amendments	This section has been superseded pursuant to Rule 2(b) and Rule 17(a).
33.42	Withdrawal or terminations	This section has been superseded pursuant to Rule 2(b) and Rule 17(a).
33.51	Docket	This section has been superseded pursuant to Rule 2(b).
33.61	Application for waiver of formal requirements	This section of the GRAPP remains applicable to provider appeals.

Chapter 35

35-A	PLEADINGS AND OTHER PRELIMINARY MATTERS	
35.1	Applications generally	This section has been superseded pursuant to Rule 2(b).
35.2	Contents of applications	This section has been superseded pursuant to Rule 2(b).
35.5	Form and content of informal complaints	This section has been superseded pursuant to Rule 2(b) and Rules 18, 19, and 20.
35.6	Correspondence handling of informal complaints	This section has been superseded pursuant to Rule 2(b) and Rules 18, 19, and 20.
35.7	Discontinuance of informal complaints without prejudice	This section has been superseded pursuant to Rule 2(b) and Rules 18, 19, and 20.
35.9	Formal complaints generally	This section has been superseded pursuant to Rule 2(b) and Rules 18, 19, and 20.
35.10	Form and content of formal complaints	This section has been superseded pursuant to Rule 2(b) and Rules 18, 19, and 20.
35.11	Joinder of formal complaints	This section has been superseded pursuant to Rule 2(b) and Rules 18, 19, and 20.
35.14	Order to show cause	This section has been superseded pursuant to Rule 2(b).
35.17	Petitions generally	This section has been superseded pursuant to Rule 2(b) and Rules 18 and 21.
35.18	Petitions for issuance, amendment, waiver or repeal of regulations	This section has been superseded pursuant to Rule 2(b) and Rules 18 and 21.
35.19	Petitions for declaratory orders	This section has been superseded pursuant to Rule 2(b) and Rules 18 and 21.
35.20	Appeals from actions of the staff	This section has been superseded pursuant to Rule 2(b) and Rules 18 and 21.
35.23	Protest generally	This section has been superseded pursuant to Rule 2(b).
35.24	Effect of protest	This section has been superseded pursuant to Rule 2(b).
35.27	Initiation of intervention	This section of the GRAPP remains applicable to provider appeals.
35.28	Eligibility to intervene	This section of the GRAPP remains applicable to provider appeals.
35.29	Form and content of petitions to intervene	This section of the GRAPP remains applicable to provider appeals.

35.30	Filing of petitions to intervene	This section of the GRAPP remains applicable to provider appeals.
35.31	Notice and action on petitions to intervene	This section of the GRAPP remains applicable to provider appeals.
35.32	Limitation of participation in hearings	This section of the GRAPP remains applicable to provider appeals.
35.35	Answers to complaints and petitions	This section has been superseded pursuant to Rule 2(b) and Rule 25.
35.36	Answers to petitions to intervene	This section has been superseded pursuant to Rule 2(b) and Rule 26.
35.37	Answers to orders to show cause	This section of the GRAPP remains applicable to provider appeals.
35.38	Respondents seeking affirmative relief	This section has been superseded pursuant to Rule 2(b) and Rule 25.
35.39	Replies to respondents seeking affirmative relief	This section has been superseded pursuant to Rule 2(b) and Rule 25.
35.40	Answers to amendments of pleadings	This section has been superseded pursuant to Rule 2(b) and Rule 26.
35.41	Satisfaction of complaints	This section has been superseded pursuant to Rule 2(b) and Rule 25.
35.45	Consolidation	This section has been superseded pursuant to Rule 2(b) and Rule 27.
35.48	Amendments of pleadings generally	In instances where a provider appeal is commenced by a request for hearing, this section is superseded by Rules 2(b), 19, 20, and 29; in instances where a provider appeal is commenced by a petition for relief, this section is applicable but is supplemented by Rule 29.
35.49	Amendments to conform to the evidence	This section has been superseded pursuant to Rule 2(b) and Rules 19, 20, and 28.
35.50	Directed amendments	This section has been superseded pursuant to Rule 2(b) and Rules 19, 20, and 28.
35.51	Withdrawal of pleadings	This section has been superseded pursuant to Rule 2(b) and Rule 30.
35.54	Motions as to complaint	This section has been superseded pursuant to Rule 2(b) and Rules 26 and 39-43.
35.55	Motions as to answer	This section has been superseded pursuant to Rule 2(b) and Rules 26 and 39-43.

35-B HEARINGS AND CONFERENCES

35.101	Waiver of hearing	This section has been superseded pursuant to Rule 2(b) and Rule 31.
35.102	Hearing calendar	This section of the GRAPP remains applicable to provider appeals.
35.103	Preliminary notice to Department of Justice	This section has been superseded pursuant to Rule 2(b).
35.104	Notice of rulemaking proceedings	This section has been superseded pursuant to Rule 2(b).
35.105	Notice of nonrulemaking proceedings	This section has been superseded pursuant to Rule 2(b).
35.106	Contents of notice of nonrulemaking proceedings	This section has been superseded pursuant to Rule 2(b).
35.111	Conferences to adjust, settle or expedite proceedings	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33, 34, and 44.
35.112	Conferences to expedite hearings	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
35.113	Initiation of conferences	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
35.114	Authority of presiding officer at conference	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
35.115	Offers of settlement	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33, 34, and 44.
35.116	Refusal to make admissions or stipulate	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.

35.121	Initiation of hearings	This section has been superseded pursuant to Rule 2(b) and Rule 45.
35.122	Consolidation of formal hearings	This section has been superseded pursuant to Rule 2(b) and Rule 47.
35.123	Conduct of hearings	This section of the GRAPP remains applicable to provider appeals.
35.124	Appearances	This section of the GRAPP remains applicable to provider appeals.
35.125	Order of procedure	This section has been superseded pursuant to Rule 2(b) and Rule 47.
35.126	Presentation by the parties	This section has been superseded pursuant to Rule 2(b) and Rule 47.
35.127	Limiting number of witnesses	This section of the GRAPP remains applicable to provider appeals.
35.128	Additional evidence	This section of the GRAPP remains applicable to provider appeals.
35.131	Recording of proceedings	This section of the GRAPP remains applicable to provider appeals.
35.132	Transcript corrections	This section of the GRAPP remains applicable to provider appeals.
35.133	Copies of transcripts	This section of the GRAPP remains applicable to provider appeals.

35-C EVIDENCE AND WITNESSES

35.137	Oral examination	This section of the GRAPP remains applicable to provider appeals.
35.138	Expert witnesses	This section has been superseded pursuant to Rule 2(b) and Rule 48.
35.139	Fees of witnesses	This section has been superseded pursuant to Rule 2(b) and Rule 49.
35.142	Subpoenas	This section has been superseded pursuant to Rule 2(b) and Rule 49.
35.145	Depositions	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.146	Notice and application	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.147	Authorization of taking deposition	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.148	Officer before whom deposition is taken	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.149	Oath and reduction to writing	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.150	Scope and conduct of examination	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.151	Status of deposition as part of record	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.152	Fees of officers and deponents	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.155	Presentation and effect of stipulations	This section of the GRAPP remains applicable to provider appeals.
35.161	Form and admissibility of evidence	This section of the GRAPP remains applicable to provider appeals.
35.162	Reception and ruling on evidence	This section of the GRAPP remains applicable to provider appeals.
35.163	Designation of relevant portions of documentary evidence	This section of the GRAPP remains applicable to provider appeals.
35.164	Documents on file with agency	This section of the GRAPP remains applicable to provider appeals.
35.165	Public documents	This section of the GRAPP remains applicable to provider appeals.
35.166	Prepared expert testimony	This section of the GRAPP remains applicable to provider appeals.
35.167	Records in other proceedings	This section of the GRAPP remains applicable to provider appeals.
35.168	Form and size of documentary evidence	This section of the GRAPP remains applicable to provider appeals.
35.169	Copies to parties and agency	This section of the GRAPP remains applicable to provider appeals.
35.173	Official notice of facts	This section has been superseded pursuant to Rule 2(b) and Rule 49.

35-D MOTIONS

35.177	Scope and contents of motions	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 38, 39, 40, and 41.
35.178	Presentation of motions	This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 38.
35.179	Objections to motions	This section has been superseded pursuant to Rule 2(b) and Rule 40 and 41.
35.180	Action on motions	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 39—43.

35-E PRESIDING OFFICERS

35.185	Designation of presiding officers	This section of the GRAPP remains applicable to provider appeals.
35.186	Disqualification of a presiding officer	This section of the GRAPP remains applicable to provider appeals.
35.187	Authority delegated to presiding officers	This section of the GRAPP remains applicable to provider appeals.
35.188	Restrictions on duties and activities	This section of the GRAPP remains applicable to provider appeals.
35.189	Manner of conduct of hearings	This section of the GRAPP remains applicable to provider appeals.
35.190	Appeals to agency head from rulings of presiding officers	This section of the GRAPP remains applicable to provider appeals.

35-F BRIEFS

35.191	Proceedings in which briefs are to be filed	This section has been superseded pursuant to Rule 2(b) and Rule 51.
35.192	Content and form of briefs	This section has been superseded pursuant to Rule 2(b) and Rule 51.
35.193	Filing and service of briefs	This section has been superseded pursuant to Rule 2(b) and Rule 51.

35-G PROPOSED REPORTS

35.201	Certification of record without proposed report	This section has been superseded pursuant to Rule 2(b).
35.202	Proceedings in which proposed reports are prepared	This section has been superseded pursuant to Rule 2(b).
35.203	Unavailability of presiding officer	This section has been superseded pursuant to Rule 2(b).
35.204	Oral argument before presiding officer	This section has been superseded pursuant to Rule 2(b).
35.205	Contents of proposed reports	This section has been superseded pursuant to Rule 2(b).
35.206	Proposed report a part of the record	This section has been superseded pursuant to Rule 2(b).
35.207	Service of proposed reports	This section has been superseded pursuant to Rule 2(b).
35.211	Procedure to except to proposed report	This section has been superseded pursuant to Rule 2(b).
35.212	Content and form of briefs on exceptions	This section has been superseded pursuant to Rule 2(b) and Rule 12.
35.213	Effect of failure to except to proposed report	This section has been superseded pursuant to Rule 2(b).
35.214	Oral argument on exceptions	This section has been superseded pursuant to Rule 2(b).

35-H BRIEFS AND ARGUMENT IN ABSENCE OF PROPOSED REPORT

35.221	Briefs and oral argument in absence of proposed report	This section has been superseded pursuant to Rule 2(b).
35.225	Interlocutory orders	This section of the GRAPP remains applicable to provider appeals.
35.226	Final orders	This section of the GRAPP remains applicable to provider appeals.

35-I REOPENING AND REHEARING

35.231	Reopening on application of party	This section has been superseded pursuant to Rule 2(b) and Rule 53.
35.232	Reopening by presiding officer	This section has been superseded pursuant to Rule 2(b) and Rule 53.
35.233	Reopening by agency action	This section of the GRAPP remains applicable to provider appeals.
35.241	Application for rehearing or re-consideration	This section has been superseded pursuant to Rule 2(b) and Rules 55 and 56.

[Pa.B. Doc. No. 03-361. Filed for public inspection February 28, 2003, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Blazing 7's Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Blazing 7's.

2. *Price:* The price of a Pennsylvania Blazing 7's instant lottery game ticket is \$1.

3. *Play Symbols:* Each Pennsylvania Blazing 7's instant lottery game ticket will contain four play areas known as "Game 1," "Game 2," "Game 3" and "Game 4." The play symbols in this game may be printed in red or black ink. The captions to the play symbols in this game will be printed in black ink. The play symbols and their captions located in the four play areas are: 1 (ONE), 2 (TWO), 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT) and 9 (NIN).

4. *Prize Play Symbols:* The prize play symbols and their captions, printed in black ink, located in the four "Prize" areas are: \$1⁰⁰ (ONE DOL), \$2⁰⁰ (TWO DOL), \$4⁰⁰ (FOR DOL), \$7⁰⁰ (SVN DOL), \$14\$ (FORTN), \$21\$ (TWY ONE), \$28\$ (TWY EGT), \$56 (FTY SIX) and \$777 (SVNSVNSVN).

5. *Prizes:* The prizes that can be won in this game are \$1, \$2, \$4, \$7, \$14, \$21, \$28, \$56 and \$777. A player can win up to four times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 15,600,000 tickets will be printed for the Pennsylvania Blazing 7's instant lottery game.

7. Determination of Prize Winners:

(a) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$777 (SVNSVNSVN) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$777.

(b) Holders of tickets with a play symbol of 7 (SVN) printed in red ink in any "Game," and a prize play symbol of \$28\$ (TWY EGT) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$56.

(c) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$56 (FTY SIX) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$56.

(d) Holders of tickets with a play symbol of 7 (SVN) printed in red ink in any "Game," and a prize play symbol of \$14\$ (FORTN) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$28.

(e) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$28\$ (TWY EGT) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$28.

(f) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$21\$ (TWY ONE) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$21.

(g) Holders of tickets with a play symbol of 7 (SVN) printed in red ink in any "Game," and a prize play symbol of \$7⁰⁰ (SVN DOL) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$14.

(h) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$14\$ (FORTN) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$14.

(i) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$7⁰⁰ (SVN DOL) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$7.

(j) Holders of tickets with a play symbol of 7 (SVN) printed in red ink in any "Game," and a prize play symbol of \$2⁰⁰ (TWO DOL) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$4.

(k) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$4⁰⁰ (FOR DOL) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$4.

(l) Holders of tickets with a play symbol of 7 (SVN) printed in red ink in any "Game," and a prize play symbol of \$1⁰⁰ (ONE DOL) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$2.

(m) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$2⁰⁰ (TWO DOL) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$2.

(n) Holders of tickets with a play symbol of 7 (SVN) printed in black ink in any "Game," and a prize play symbol of \$1⁰⁰ (ONE DOL) appearing in the "Prize" area for that "Game," on a single ticket, shall be entitled to a prize of \$1.

<i>Get</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 15,600,000 Tickets</i>
\$1	\$1	1:8.96	1,742,000
\$1 × 2	\$2	1:33.33	468,000
\$1 (Red)	\$2	1:33.33	468,000
\$4	\$4	1:1,000	15,600
\$1 × 4	\$4	1:1,000	15,600
\$2 × 2	\$4	1:1,000	15,600
\$2 (Red)	\$4	1:272.73	57,200
\$7	\$7	1:30	520,000
\$14	\$14	1:1,500	10,400
\$7 × 2	\$14	1:3,000	5,200
\$7 (Red)	\$14	1:1,500	10,400
\$21	\$21	1:3,000	5,200
\$7 × 3	\$21	1:1,500	10,400
\$7 + \$14	\$21	1:1,500	10,400
\$28	\$28	1:80,000	195
\$7 × 4	\$28	1:80,000	195
\$14 × 2	\$28	1:80,000	195
\$14 (Red)	\$28	1:80,000	195
\$56	\$56	1:240,000	65
\$14 × 4	\$56	1:240,000	65
\$28 × 2	\$56	1:240,000	65
\$28 (Red)	\$56	1:240,000	65
\$777	\$777	1:240,000	65

(Red) = Double the prize

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Blazing 7's instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Blazing 7's, prize money from winning Pennsylvania Blazing 7's instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Blazing 7's instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

Pennsylvania Blazing 7's or through normal communications methods.

GREGORY C. FAJT,
Acting Secretary

[Pa.B. Doc. No. 03-362. Filed for public inspection February 28, 2003, 9:00 a.m.]

Pennsylvania Cashword Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Cashword.

2. *Price:* The price of a Pennsylvania Cashword instant lottery game ticket is \$3.

3. *Play Symbols:* Each Pennsylvania Cashword instant lottery game ticket will feature a "Your Letters" area and a crossword puzzle play area. The play symbols and their captions located in the "Your Letters" area are: the letters A through and including Z. The play symbols and their captions located in the crossword puzzle play area are: the letters A through and including Z and a black square.

4. *Prizes:* The prizes that can be won in this game are \$3, \$6, \$9, \$12, \$30, \$90, \$300 and \$15,000.

5. *Approximate Number of Tickets Printed for the Game:* Approximately 4,320,000 tickets will be printed for the Pennsylvania Cashword instant lottery game.

6. *Determination of Prize Winners:*

(a) Holders of tickets where the player completely uncovers 11 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$15,000.

(b) Holders of tickets where the player completely uncovers 10 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$300.

(c) Holders of tickets where the player completely uncovers 9 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$90.

(d) Holders of tickets where the player completely uncovers 8 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$30.

(e) Holders of tickets where the player completely uncovers 7 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$12.

(f) Holders of tickets where the player completely uncovers 6 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$9.

(g) Holders of tickets where the player completely uncovers 5 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$6.

(h) Holders of tickets where the player completely uncovers 4 words, using only the letters found in the "Your Letters" area, on a single ticket, shall be entitled to a prize of \$3.

(i) A prize will be paid only for the highest Pennsylvania Crossword instant lottery game prize won on the ticket if the ticket meets the criteria established in 61 Pa. Code § 819.213 (relating to ticket validation and requirements).

7. *Game Play Instructions:*

(a) The player shall scratch the "Your Letters" area to reveal 18 letters. For each of the 18 letters revealed in the "Your Letters" area, the player shall rub the same letter each time it is found in the crossword puzzle play area.

(b) When a player reveals four or more words in the crossword puzzle play area, the player is entitled to win a prize as described in Section 6.

(c) For purposes of this game, a word must contain at least three letters and cannot be formed by linking letters diagonally or by reading the letters from the bottom to the top.

(d) Letters combined to form a word must appear in an unbroken horizontal or vertical string of letters in the crossword puzzle area. An unbroken string of letters cannot be interrupted by a black space and must contain every single letter square between two black spaces.

(e) Every single letter in the unbroken string must be revealed in the "Your Letters" area and be included to form a word.

(f) The possible complete words for each ticket in the game are shown on the crossword puzzle area of the ticket. The player must match all of the letters in a possible complete word in order to complete the word.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>Get</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 4,320,000 Tickets</i>
4 Words	\$3	1:7.14	604,800
5 Words	\$6	1:12.50	345,600
6 Words	\$9	1:33.33	129,600
7 Words	\$12	1:40	108,000
8 Words	\$30	1:100	43,200
9 Words	\$90	1:1,846	2,340
10 Words	\$300	1:6,000	720
11 Words	\$15,000	1:720,000	6

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Cashword instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Cashword, prize money from winning Pennsylvania Cashword instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Cashword instant lottery game, the right of

a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets

from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Cashword or through normal communications methods.

GREGORY C. FAJT,
Acting Secretary

[Pa.B. Doc. No. 03-363. Filed for public inspection February 28, 2003, 9:00 a.m.]

Pennsylvania Super Jumbo Bucks Instant Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Super Jumbo Bucks.

2. *Price:* The price of a Pennsylvania Super Jumbo Bucks instant lottery game ticket is \$5.

3. *Play Symbols:* Each Pennsylvania Super Jumbo Bucks instant lottery game ticket will contain one play area featuring a "Winning Numbers" area and a "Your Numbers" area. The play symbols and their captions located in the "Winning Numbers" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTEN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR) and 24 (TWYFOR). The play symbols and their captions located in the "Your Numbers" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTEN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR) and a Money Bag Symbol (MNYBAG).

4. *Prize Play Symbols:* The prize play symbols and their captions located in the "Your Numbers" area are: \$2.⁰⁰ (TWO DOL), \$5.⁰⁰ (FIV DOL), \$6.⁰⁰ (SIX DOL), \$7.⁰⁰ (SVN DOL), \$10.⁰⁰ (TEN DOL), \$12\$ (TWELV), \$15\$ (FIFTN), \$20\$ (TWENTY), \$100 (ONE HUN), \$250 (TWOHUNFTY), \$500 (FIV HUN), \$5,000 (FIV THO) and \$50,000 (FTY THO).

5. *Prizes:* The prizes that can be won in this game are \$2, \$5, \$6, \$7, \$10, \$12, \$15, \$20, \$100, \$250, \$500, \$5,000 and \$50,000. A player can win up to 11 times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 9,000,000 tickets will be printed for the Pennsylvania Super Jumbo Bucks instant lottery game.

7. Determination of Prize Winners:

(a) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$50,000 (FTY THO) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(b) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol

(MNYBAG), and a prize play symbol of \$5,000 (FIV THO) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$5,000.

(c) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$5,000 (FIV THO) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(d) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$500 (FIV HUN) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$500.

(e) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$500 (FIV HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(f) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$250 (TWOHUNFTY) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$250.

(g) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$250 (TWOHUNFTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$250.

(h) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$100 (ONE HUN) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$100 (ONE HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(j) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$20\$ (TWENTY) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$20.

(k) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$20\$ (TWENTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(l) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$15\$ (FIFTN) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$15.

(m) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$15\$ (FIFTN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$15.

(n) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$12⁰⁰ (TWELV) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$12.

(o) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$12⁰⁰ (TWELV) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$12.

(p) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$10⁰⁰ (TEN DOL) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$10.

(q) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$10⁰⁰ (TEN DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(r) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$7⁰⁰ (SVN DOL) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$7.

(s) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$7⁰⁰ (SVN DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$7.

(t) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$6⁰⁰ (SIX DOL) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$6.

(u) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$6⁰⁰ (SIX DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$6.

(v) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Money Bag Symbol (MNYBAG), and a prize play symbol of \$5⁰⁰ (FIV DOL) appears under the Money Bag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$5.

(w) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$5⁰⁰ (FIV DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$5.

(x) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$2⁰⁰ (TWO DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$2.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

*When Any of Your
Numbers Match Any
of the Winning
Numbers, Win With
Prize(s) of:*

	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 9,000,000 Tickets</i>
\$5	\$5	1:15	600,000
\$5 (MB)	\$5	1:8.82	1,020,000
\$6	\$6	1:300	30,000
\$6 (MB)	\$6	1:75	120,000
\$7	\$7	1:300	30,000
\$7 (MB)	\$7	1:75	120,000
\$2 × 5	\$10	1:150	60,000
\$5 × 2	\$10	1:150	60,000
\$10	\$10	1:600	15,000
\$10 (MB)	\$10	1:600	15,000
\$6 × 2	\$12	1:150	60,000
\$5 + \$7	\$12	1:300	30,000
\$12	\$12	1:300	30,000
\$12 (MB)	\$12	1:300	30,000
\$5 × 3	\$15	1:150	60,000
\$10 + \$5	\$15	1:150	60,000
\$15	\$15	1:600	15,000
\$15 (MB)	\$15	1:600	15,000
\$15 + \$5	\$20	1:600	15,000
\$5 × 4	\$20	1:300	30,000
\$10 × 2	\$20	1:600	15,000
\$5 × 2 + \$10	\$20	1:300	30,000

*When Any of Your
Numbers Match Any
of the Winning
Numbers, Win With
Prize(s) of:*

<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 9,000,000 Tickets</i>
\$7 × 2 + \$6	1:300	30,000
\$20	1:600	15,000
\$20 (MB)	1:600	15,000
\$20 × 5	1:480	18,750
\$10 × 5 + \$20 × 2 + \$5 × 2	1:342.86	26,250
\$15 × 4 + \$10 × 4	1:480	18,750
\$20 × 3 + \$5 × 8	1:400	22,500
\$100	1:1,690	5,325
\$100 (MB)	1:960	9,375
\$250	1:24,000	375
\$250 (MB)	1:24,000	375
\$100 × 5	1:450,000	20
\$250 × 2	1:450,000	20
\$500	1:450,000	20
\$500 (MB)	1:600,000	15
\$500 × 10	1:1,800,000	5
\$5,000	1:1,800,000	5
\$5,000 (MB)	1:1,800,000	5
\$50,000	1:1,800,000	5

(MB) = Money bag, win that prize automatically

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Super Jumbo Bucks instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Super Jumbo Bucks, prize money from winning Pennsylvania Super Jumbo Bucks instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Super Jumbo Bucks instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Super Jumbo Bucks or through normal communications methods.

GREGORY C. FAJT,
Acting Secretary

[Pa.B. Doc. No. 03-364. Filed for public inspection February 28, 2003, 9:00 a.m.]

DEPARTMENT OF STATE

Right-to-Know Law Notice

Under the provisions of the act of June 21, 1957 (P. L. 390) (65 P. S. §§ 66.1—66.9), what is commonly referred to as the Right-to-Know Law, as amended by the act of June 29, 2002 (P. L. 663, No. 100), which was effective December 26, 2002, the Department of State (Department) issues this notice to inform requesters who make a request of the Department for a record under the Right-to-Know Law of the following information:

1. *Requests for Documents*

Requests under the Right-to-Know Law should be addressed to the Department's Right-to-Know Law Official and the Right-to-Know Law Office as follows:

Brian McDonald
Right-to-Know Law Official
Department of State
Room 307
North Office Building
Harrisburg, PA 17120
Fax (717) 772-4175

Requests must be made in writing, received during the normal business hours that the Department is in operation. The normal business hours of the Department are 8:30 a.m.—5 p.m. Oral requests, anonymous requests and electronic requests (other than those made by facsimile transmission) are not permitted and will not be honored.

2. *Fees and Charges*

Unless otherwise provided as set forth in this notice, the fees and charges to be charged by the Department for responding to Right-to-Know Law requests will be those set forth in Section 12 (relating to fees and charges) of

Management Directive No. 205.36 (relating to the Right-to-Know Law) dated November 27, 2002. For photocopies this is 15¢ per standard 8.5" x 11" page, provided that the Department's copiers are utilized. Exceptions to this fee and the statutory basis are as follows:

<i>Record Location</i>	<i>Fee</i>	<i>Statutory Basis</i>
Corporation Bureau	\$2	15 Pa.C.S. § 153(a)(9)
Bureau of Commissions, Elections and Legislation (Campaign Finance only)	10¢	25 P.S. § 3259(3)

The Department will charge an additional fee of \$28 per document for providing certified copies of Corporation Bureau documents. See 15 Pa.C.S. § 153(a)(10). The fee for all other certified copies is \$15.

BENJAMIN RAMOS,
Acting Secretary of the Commonwealth

[Pa.B. Doc. No. 03-365. Filed for public inspection February 28, 2003, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

Giorgio Foods, Inc. v. DEP; EHB Doc. No. 2003-030-K

Giorgio Foods, Inc. has appealed the issuance by the Department of Environmental Protection of NPDES Permit No. PA0053091 (Amendment No. 1) (January 23, 2003) to same for a facility in Maidencreek Township, Berks County, PA.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form, contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

GEORGE J. MILLER,
Chairperson

[Pa.B. Doc. No. 03-366. Filed for public inspection February 28, 2003, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Meetings Scheduled

The Health Care Cost Containment Council (Council) has scheduled the following meetings: Wednesday, March

5, 2003, Data Systems Committee Meeting—10 a.m., Education Committee—1 p.m.; Thursday, March 6, 2003, Council Meeting—10 a.m. The meetings will be held in the conference room at the Council Office, 225 Market Street, Suite 400, Harrisburg, PA 17101. The public is invited to attend. Persons in need of accommodation due to a disability who wish to attend the meetings should contact Cherie Elias, Health Care Cost Containment Council, 225 Market Street, Harrisburg, PA 17101, (717) 232-6787, at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 03-367. Filed for public inspection February 28, 2003, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its website at www.irrc.state.pa.us. To obtain a copy of a regulation, contact the promulgating agency.

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
15-416	Department of Revenue Master Settlement Agreement	2/12/03
47-9	Milk Marketing Board Over-Order Premium Pool	2/14/03

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 03-368. Filed for public inspection February 28, 2003, 9:00 a.m.]

INSURANCE DEPARTMENT

Alleged Violation of Insurance Laws; Howard Pindell; Doc. No. SC03-02-011

Notice is hereby given of the Order to Show Cause issued on February 14, 2003, by the Deputy Insurance Commissioner of the Commonwealth in the previously referenced matter. Violation of the following is alleged: sections 602, 604, 605, 633.1 and 639 of The Insurance Department Act of 1921 (40 P.S. §§ 232, 234, 235, 273.1 and 279); and 31 Pa. Code §§ 37.17, 37.46 and 37.47 (relating to collection of premiums requires certificate or license; standards for denial of certificate/license; and revocation, suspension, nonrenewal of certificates and licenses). Respondent shall file a written answer to the Order to Show Cause within 30 days of the date of issue. If respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S.

§§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), 31 Pa. Code Chapter 56 (relating to special rules of administrative practice and procedure) and other relevant procedural provisions of law.

Answers, motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed in writing with the Hearings Administrator, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency ADA Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-369. Filed for public inspection February 29, 2003, 9:00 a.m.]

Eligible Surplus Lines Insurer List

In accordance with section 1605(b) of the Insurance Company Law of 1921 (40 P. S. § 991.1605(b)), the Insurance Department hereby publishes the most recent Eligible Surplus Lines Insurer List. This list replaces in its entirety the Eligible Surplus Lines Insurer List as of July 25, 2002, published at 32 Pa.B. 3997 (August 10, 2002).

Persons who have questions concerning this notice should contact Robert Brackbill, Chief, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 787-2735.

As of January 7, 2003

<i>Key #</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
10517	Acceptance Insurance Company	301 South 13th Street, Suite 500 Lincoln, NE 68508
10512	Admiral Insurance Company	1209 Orange Street Wilmington, DE 19801
10513	Adriatic Insurance Company	314 East Thayer Avenue Bismarck, ND 58501
39908	Alea London Limited	The Corn Exchange 55 Mark Lane London, England EC3R 7NE
10516	Allianz Underwriters Insurance Company	2350 Empire Avenue Burbank, CA 91504-3350
10519	American Empire Surplus Lines Insurance Company	1209 Orange Street Wilmington, DE 19801
10520	American Equity Insurance Company	7676 East Pinnacle Peak Road Scottsdale, AZ 85255
36855	American Healthcare Specialty Insurance Company	425 W. Capitol Avenue Suite 1800 Little Rock, AR 72201
10521	American International Specialty Lines Insurance Company	1400 West Benson Blvd., Suite 315 Anchorage, AK 99503
18146	American Safety Indemnity Company	600 Bank of Oklahoma Plaza 201 Robert S. Kerr Avenue Oklahoma City, OK 73102
10522	American Western Home Insurance Company	600 Fidelity Plaza Oklahoma City, OK 73102
10524	Appalachian Insurance Company	Allendale Park P. O. Box 7500 Johnston, RI 02919-0500
33748	Arch Excess & Surplus Insurance Company	10306 Regency Parkway Drive Omaha, NE 68113
10587	Arch Specialty Insurance Company	1800 North Point Drive Stevens Point, WI 54481
22348	Assicurazioni Generali Di Trieste	Piazza Duca Degli Abruzzi, 2 Trieste, Italy 34132
22349	Associated Electric & Gas Insurance Services Limited	Liberty International 73 Front Street, 3rd Floor Hamilton, Bermuda HM11
10525	Associated International Insurance Company	21820 Burbank Boulevard, #330 Woodland Hills, CA 91367

<i>Key #</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
41586	Atlantic Casualty Insurance Company	400 Commerce Court Goldsboro, NC 27534
10526	Audubon Indemnity Company	795 Woodways Parkway Suite 310 Ridgeland, MS 39157
41562	AXA Corporate Solutions Assurance	4 Rue Jules Lefebvre Paris, France 75009
22369	British Aviation Insurance Company Limited	Fitzwilliam House 10 St. Mary's Axe London, England EC3A 8EQ
10527	Caliber One Indemnity Company	1209 Orange Street Wilmington, DE 19801
10528	Canal Indemnity Company	400 East Stone Avenue Greenville, SC 29601
10529	Centennial Casualty Company	2200 Woodcrest Place Suite 200 Birmingham, AL 35209
10531	Century Surety Company	2400 Corporate Exchange Drive Columbus, OH 43231
22371	CGU International Insurance plc	St. Helen's 1 Undershaft London, England EC3P 3DQ
10532	Chubb Custom Insurance Company	32 Loockeman Square Dover, DE 19901
18617	Clarendon America Insurance Company	224 West State Street Trenton, NJ 08608
22419	CNA Insurance Company Limited	P. O. Box 6 Surrey Street Norfolk, England NR1 3NS
10533	Colony Insurance Company	9201 Forest Hill Avenue Suite 200 Richmond, VA 23235-6865
10582	Colony National Insurance Company	9201 Forest Hill Avenue Suite 200 Richmond, VA 23235-6865
10534	Columbia Casualty Company	CNA Plaza Chicago, IL 60685
10535	Commercial Underwriters Insurance Company	200 Corporate Pointe Suite 300 Culver City, CA 90230
22388	Commonwealth Insurance Company	595 Burrard Street, Suite 1500 Box 49115 Bentall Tower Three Vancouver, B.C., Canada V7X 1G4
10536	Connecticut Specialty Insurance Company	9 Farm Springs Road Farmington, CT 06032
37372	Crum & Forster Specialty Insurance Company	2999 North 44th Street Suite 250 Phoenix, AZ 85018
10538	Crusader Insurance Company	23251 Mulholland Drive Woodland Hills, CA 91364
35611	Dakota Specialty Insurance Company	316 North Fifth Street Bismarck, ND 58502
37001	Discover Specialty Insurance Company	500 West Madison, Suite 2600 Chicago, IL 60661
10541	Empire Indemnity Insurance Company	809 Northwest 36th Street Oklahoma City, OK 73118
10542	Essex Insurance Company	1209 Orange Street Wilmington, DE 19801

<i>Key #</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
10543	Evanston Insurance Company	Ten Parkway North Deerfield, IL 60015
10544	Everest Indemnity Insurance Company	Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
10545	Executive Risk Specialty Insurance Company	82 Hopmeadow Street Simsbury, CT 06070-7683
10546	Fidelity Excess and Surplus Insurance Company	515 Main Street Cincinnati, OH 45202
10547	Fireman's Fund Insurance Company of Ohio	312 Walnut Street Suite 1100 Cincinnati, OH 45202
10548	First Financial Insurance Company	528 South Fifth Street Suite 210 Springfield, IL 62701-1822
10549	First Mercury Insurance Company	One South Wacker Drive Suite 2740 Chicago, IL 60606
10550	First Specialty Insurance Corporation	237 East High Street Jefferson City, MO 65102
18477	Gemini Insurance Company	Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
10553	General Agents Insurance Company of America, Inc.	5623 North Western, Suite B Oklahoma City, OK 73118
37373	General Security Indemnity Company	199 Water Street 21st Floor New York, NY 10038
10552	General Security Indemnity Company of Arizona	3636 North Central Avenue Phoenix, AZ 85012
10554	General Star Indemnity Company	695 East Main Street P. O. Box 10354 Stamford, CT 06904-2354
22411	Generali-France Assurances	5, rue de Londres Paris, France 75009
10555	Genesis Indemnity Insurance Company	316 North Fifth Street Bismarck, ND 58501
44715	Glencoe Insurance Ltd.	Renaissance House, 8 East Broadway P. O. Box HM 2527 Hamilton, Bermuda HM GX
10556	Gotham Insurance Company	330 Madison Avenue New York, NY 10017
10514	Great American E & S Insurance Company	The Corporation Trust Company 1209 Orange Street Wilmington, DE 19801
10518	Great American Fidelity Insurance Company	The Corporation Trust Company 1209 Orange Street Wilmington, DE 19801
10540	Great American Protection Insurance Company	One Indiana Square Suite 1800 Indianapolis, IN 46204
22412	Great Lakes Reinsurance (UK) PLC	Upper Ground Floor, 1 Minster Court Mincing Lane London, England EC3R 7AA
36489	Guilford Insurance Company	528 South Fifth Street Suite 210 Springfield, IL 62701-1822

<i>Key #</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
36490	Gulf Insurance Company U.K. Limited	Suite 616, The Lloyds Bldg. 1 Lime Street London, England EC3M 7DQ
10557	Gulf Underwriters Insurance Company	One Tower Square Hartford, CT 06183
44169	Homeland Insurance Company of New York	201 Old Country Road Melville, NY 11747
10559	Houston Casualty Company	13403 Northwest Freeway Houston, TX 77040-6094
10560	Illinois Emcasco Insurance Company	815 Commerce Drive Oak Brook, IL 60521-1978
10561	Illinois Union Insurance Company	525 West Monroe Street Chicago, IL 60631
22413	Indemnity Marine Assurance Company Limited	St. Helen's 1 Undershaft London, England EC3P 3DQ
10562	Indian Harbor Insurance Company	Seaview House 70 Seaview Avenue Stamford, CT 06902-6040
10563	INEX Insurance Exchange	1 South Wacker Drive Suite 2720 Chicago, IL 60606-4617
28076	International Insurance Company of Hannover Limited	Hannover House Virginia Water London, England GU 25 4AA
10564	Interstate Fire & Casualty Company	55 East Monroe Street Chicago, IL 60603
10566	ITT Pacific Insurance Company, Limited	Hartford Plaza Hartford, CT 06115
26714	Kemper Indemnity Insurance Company	1 Kemper Drive Long Grove, IL 60049-0001
38900	Kemper Surplus Lines Insurance Company	1 Kemper Drive Long Grove, IL 60049-0001
8967	Landmark American Insurance Company	11032 Quail Creek Road Suite 200 Oklahoma City, OK 73120
10567	Landmark Insurance Company	777 South Figueroa Street Los Angeles, CA 90017
10568	Legion Indemnity Company	190 S. LaSalle Street Chicago, IL 60603
10569	Lexington Insurance Company	1209 Orange Street Wilmington, DE 19801
22415	Liberty Mutual Insurance Company (UK) Limited	4th Floor, One Minster Court Mincing Lane London, England EC3R 7AA
18457	Liberty Surplus Insurance Corporation	175 Berkeley Street Boston, MA 02117
22416	Lloyd's (Underwriters at)	One Lime Street London, England EC3M 7HA
22417	London and Edinburgh Insurance Company Limited	8 Surrey Street Norwich, England NR1 3NG
22418	Marine Insurance Company Limited	St. Mark's Court, Chart Way West Sussex, England RH 12 1XL
22455	Markel International Insurance Company Limited	The Markel Building 49 Leadenhall Street London, England EC3A 2EA
10570	Monticello Insurance Company	1209 Orange Street Wilmington, DE 19801

<i>Key #</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
10571	Mt. Hawley Insurance Company	9025 N. Lindbergh Drive Peoria, IL 61615
10572	NAMIC Insurance Company, Inc.	3601 Vincennes Road Indianapolis, IN 46268
10573	National Fire & Marine Insurance Company	3024 Harney Street Omaha, NE 68131-3580
10574	Nautilus Insurance Company	7273 East Butherus Drive Scottsdale, AZ 85260
10575	NIC Insurance Company	One Penn Plaza New York, NY 10119-0002
10537	Noetic Specialty Insurance Company	1111 Plaza Drive Suite 500 Schaumburg, IL 60173
10576	North American Capacity Insurance Company	650 Elm Street Manchester, NH 03101-2524
22420	Northern Assurance Company Limited	St. Helen's 1 Undershaft London, England EC3P 3DQ
10577	Northfield Insurance Company	Monroe House Law Ctr 237 E. High Street Jefferson City, MO 65101
10578	Nutmeg Insurance Company	Hartford Plaza Hartford, CT 06115
22421	Ocean Marine Insurance Company Limited	St. Helen's 1 Undershaft London, England EC3P 3DQ
10579	Old Republic Union Insurance Company	307 North Michigan Avenue Chicago, IL 60601
10580	Pacific Insurance Company	c/o CT Corp 818 West 7th Street Los Angeles, CA 90017
23150	Princeton Excess and Surplus Lines Insurance Company	2711 Centerville Road Suite 400 Wilmington, DE 19808
10583	Professional Underwriters Liability Insurance Company	50 West Broadway Salt Lake City, UT 84101
22449	QBE International Insurance Limited	Corn Exchange Mark Lane London, England EC3R 7NE
10584	Queensway International Indemnity Company	10199 Southside Boulevard, Bldg 1 Suite 200 Jacksonville, FL 32256
44436	Red Mountain Casualty Insurance Company, Inc.	100 Brookwood Place, Suite 500 Birmingham, AL 35209
10588	Royal Surplus Lines Insurance Company	500 Winding Brook Drive Glastonbury, CT 06033
10589	SAFECO Surplus Lines Insurance Company	SAFECO Plaza Seattle, WA 98185
10590	Savers Property & Casualty Insurance Company	700 West 47th Street Kansas City, MO 64112-1802
10591	Scottsdale Insurance Company	One Nationwide Plaza Columbus, OH 43215
44276	Seneca Specialty Insurance Company	2999 North 44th Street Suite 250 Phoenix, AZ 85018-7256
10592	Sheffield Insurance Corporation	One South Wacker Drive, Suite 2700 Chicago, IL 60606

<i>Key #</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
33514	Sirius International Insurance Corporation	Birger Jarlsgatan 57B Stockholm, Sweden SE-113 96
10565	Specialty Surplus Insurance Company	1 Kemper Drive Long Grove, IL 60049-0001
22453	SR International Business Insurance Company Limited	71-77 Leadenhall Street London, England EC3A 2PQ
22454	St. Paul Reinsurance Company Limited	52 Lime Street London, England EC3M 7BS
10593	St. Paul Surplus Lines Insurance Company	32 Loockerman Square Dover, DE 19901
38980	Starr Excess Liability Insurance Company, Ltd.	1010 Centre Road Wilmington, DE 19850
10594	Steadfast Insurance Company	Suite 202 32 Loockerman Square Dover, DE 19901
10595	Stonewall Insurance Company	580 Walnut Street Cincinnati, OH 45202
22456	Through Transport Mutual Insurance Association Limited	Windsor Place, Queen Street P. O. Box HM655 Hamilton, Bermuda HMCX
10596	TIG Specialty Insurance Company	777 Arnold Drive, Suite 200 Martinez, CA 94553
10597	Travelers Excess and Surplus Lines Company	One Tower Square Hartford, CT 06183
10598	Tudor Insurance Company	91 Court Street Keene, NH 03431
10599	U.S. Underwriters Insurance Company	316 North Fifth Street Sixth Floor Bismarck, ND 58501
10600	ULICO Indemnity Company	320 West Capital Street Suite 1000 Little Rock, AR 72201-3525
10603	United Coastal Insurance Company	40 North Central Avenue Phoenix, AZ 85004
44120	United National Casualty Insurance Company	5253 Hohman Avenue P. O. Box 1150 Hammond, IN 46320
10558	United National Specialty Insurance Company	Three Bala Plaza, East Suite 300 Bala Cynwyd, PA 19004
10605	Voyager Indemnity Insurance Company	3237 Satellite Boulevard, Suite 400 Duluth, GA 30096
10607	Westchester Surplus Lines Insurance Company	Six Concourse Parkway Suite 2500 Atlanta, GA 30328-5346
10608	Western Heritage Insurance Company	6263 N. Scottsdale Road Suite 240 Scottsdale, AZ 85250
10610	Western World Insurance Company	91 Court Street Keene, NH 03431
10604	XL Select Insurance Company	5810 East Skelly Drive Suite 700 Tulsa, OK 74135
22460	Yorkshire Insurance Company Limited	2 Rougier Street York, Scotland YO90 1UU
10611	ZC Specialty Insurance Company	400 West 15th Street Suite 7 Austin, TX 78701

<i>Key #</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
22461	Zurich International (Bermuda) Ltd.	The Zurich Centre, 90 Pitt's Bay Road P. O. Box HM 2268 Hamilton, Bermuda HMJX
22462	Zurich Specialties London Limited	The Zurich Building 90 Fenchurch Street London, England EC3M 4JX

Since publication of the July 25, 2002, Eligible Surplus Lines Insurer List, the following significant changes have occurred:

	<i>Company Name</i>	<i>Eff. Date</i>
Additions:	United National Casualty Insurance Company	10/15/02
	Homeland Insurance Company of New York	10/18/02
	Seneca Specialty Insurance Company	11/04/02
	Red Mountain Casualty Insurance Company, Inc.	11/19/02
	Glencoe Insurance Ltd.	12/12/02
Deletions:	If Industrial Insurance Ltd.	09/30/02
	Wausau General Insurance Company	10/03/02
Name Changes:		
From:	Winterthur International Underwriters Insurance Company	01/01/02
	To: XL Select Insurance Company	
From:	Maritime Insurance Company Limited	02/01/02
	To: CNA Insurance Company Limited	
From:	Rock River Insurance Company	08/01/02
	To: Arch Specialty Insurance Company	
From:	Cross River Insurance Company	08/01/02
	To: Arch Excess & Surplus Insurance Company	
From:	Terra Nova Insurance Company Limited	11/04/02
	To: Markel International Insurance Company Limited	

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-370. Filed for public inspection February 28, 2003, 9:00 a.m.]

HealthAmerica; Eastern and Western Service Areas; Rate Filing

On February 12, 2003, HealthAmerica submitted rate filings No. A67311001 and No. A67312001 for the eastern and western service areas requesting approval of pharmacy rate increases ranging from 10.9% to 19.9% for the eastern service area and between 9.0% and 19.7% for the western service area. The proposed pharmacy rate increase will be effective April 1, 2003. Approximately 88,494 members will be affected by the increase in the eastern service area and 65,355 in the western service area. The proposed increase will produce additional revenue of approximately \$760,000.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional offices in Harrisburg and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-371. Filed for public inspection February 28, 2003, 9:00 a.m.]

Highmark Inc.; Requesting Approval to Update Prescription Drug Trend Rates; Filing No. 1-FSD-03-HBCBS

Highmark, Inc. d/b/a Highmark Blue Cross Blue Shield requests approval for a prescription drug trend rate of 20% for its Freestanding Drug Program associated with its managed care plans (Open Access, Point of Service and Preferred Provider Organization) and 30% for its Freestanding Drug Program associated with its Indemnity Plans (Traditional and Comprehensive Major Medical). The filing will apply to client notification dates on or after April 1, 2003, for new business and June 1, 2003, for renewals.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Bharat Patel, Actuary, Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-372. Filed for public inspection February 28, 2003, 9:00 a.m.]

Keystone Health Plan West, Inc.; Requesting Approval to Update Prescription Drug Trend Rate; Filing No. 1-ERHMO-03-KHPW

Keystone Health Plan West, Inc., requests approval for a prescription drug trend rate of 20% for its group HMO business: Keystone Blue and Community Blue HMO. The filing will apply to client notification dates on or after April 1, 2003, for new business and June 1, 2003, for renewals.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Bharat Patel, Actuary, Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-373. Filed for public inspection February 28, 2003, 9:00 a.m.]

Life and Health Insurance Company of America; Rate Filing

Life and Health Insurance Company of America is requesting approval to increase the premium 30% for the long term care policy form LHA-5101. The increase will affect 214 Commonwealth policyholders.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 15 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-374. Filed for public inspection February 28, 2003, 9:00 a.m.]

Nationwide Mutual Insurance Company; Private Passenger Automobile Insurance Rate Revision

On February 14, 2003, the Insurance Department (Department) received from Nationwide Mutual Insurance Company a filing for a rate level change for private passenger automobile insurance.

The company requests an overall 4.5% increase amounting to \$25.176 million annually, to be effective June 17, 2003.

Unless formal administrative action is taken prior to April 15, 2003, the subject filing may be deemed approved by operation of law.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Department's regional offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to Michael W. Burkett, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, mburkett@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-375. Filed for public inspection February 28, 2003, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insured has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with the company's termination of the insured's policy. The administrative hearing will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Harrisburg Administrative Hearings Office, Capital Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Joseph G. Moyer; file no. 03-188-00634; State Farm Fire and Casualty Company; doc. no. P03-02-010; March 12, 2003, 1:30 p.m.

Each party may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-376. Filed for public inspection February 28, 2003, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board leases will expire:

Allegheny County, Wine & Spirits Shoppe #0292, North Hills Village, 4801 McKnight Road, Pittsburgh, PA 15237-412.

Lease Expiration Date: February 29, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,500 net useable square feet of new or existing retail commercial space in a shopping center environment with good parking and loading facilities along McKnight Road south of the intersection with Seibert Road, Pittsburgh.

Proposals due: March 21, 2003, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222
Contact: George Danis, (412) 565-5130

Allegheny County, Wine & Spirits Shoppe #0294, Olympia Shopping Center, 4313 Walnut Street, McKeesport, PA 15132-6110.

Lease Expiration Date: January 31, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,500 net useable square feet of new or existing retail commercial space in a shopping center environment. Site should be located near the intersection of Walnut Street and Long Run Road, Versailles.

Proposals due: March 21, 2003, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222
Contact: Bruce VanDyke, (412) 565-5130

Cambria County, Wine & Spirits Shoppe #1111, 3670 Portage Street, Portage, PA 15946-6540.

Lease Expiration Date: February 29, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,500 net useable square feet of new or existing retail commercial space serving the Borough of Portage. Site should have good parking and tractor-trailer loading facilities.

Proposals due: March 21, 2003, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222
Contact: George Danis, (412) 565-5130

Luzerne County, Wine & Spirits Shoppe #4001, 210 E. End Centre, Wilkes-Barre, PA 18702-6970.

Lease Expiration Date: November 30, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 5,000 to 7,000 net useable square feet of new or existing retail commercial space located on Mundy Street or Highland Boulevard, Wilkes-Barre.

Proposals due: March 21, 2003, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Charles D. Mooney, (717) 657-4228

Clinton County, Wine & Spirits Shoppe #1802, 536 Erie Avenue, Renovo, PA 17764-1018.

Lease Expiration Date: March 31, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,300 to 1,500 net useable square feet of new or existing retail commercial space within Renovo Borough.

Proposals due: March 21, 2003, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Joseph P. Hannon, (717) 657-4228

JONATHAN H. NEWMAN,
Chairperson

[Pa.B. Doc. No. 03-377. Filed for public inspection February 28, 2003, 9:00 a.m.]

PATIENT SAFETY AUTHORITY

Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.303), enacted on March 20, 2002, announces a meeting of the Authority's 11 member board to be held at the Wildwood Conference Center, Harrisburg Area Community College, Harrisburg, PA at 9:30 a.m. on Monday, March 10, 2003.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

ALAN B.K. RABINOWITZ,
Administrator

[Pa.B. Doc. No. 03-378. Filed for public inspection February 28, 2003, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Each protest shall indicate whether it applies to the temporary authority application, the per-

manent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before March 24, 2003. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for approval to *begin operating as common carriers for transportation of persons as described under each application.*

A-00119575. Nghia Trong Le t/d/b/a Great Valley Cab Company (150 Sproul Road, Frazer, Chester County, PA 19355)—persons upon call or demand in that portion of Chester County on and north of Old U.S. Highway Route 30.

A-00119584. Joshua F. Sparks (1883 Millson Circle, State College, Centre County, PA 16801)—persons in limousine service, between points in the Borough of State College, Centre County, and within an airline distance of 25 statute miles of the limits thereof, and from points in said territory to points in Pennsylvania, and return.

A-00119582. Barton J. Weidlich t/d/b/a Shorte's Taxi (160 South Main St., Pittston, Luzerne County, PA 18640)—persons upon call or demand in Luzerne County.

A-00119579. Michael P. Wynkoop t/d/b/a Koop's Taxi (P. O. Box 386, Ford City, Armstrong County, PA 16226)—persons upon call or demand in Armstrong County.

Application of the following for approval of the *beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under the application*

A-00119578. Eugenia Goroshovsky t/d/b/a Genny Limousine Services (11169 Hendrix St., Philadelphia, PA 19116)—persons in limousine service, between points in Pennsylvania; which is to be a transfer of the right, authorized under the certificate issued at A-00106359, F.2., to Eugenia Cab Co. t/d/b/a Leon Limousine Service, subject to the same limitations and conditions.

Application of the following for the approval of the *transfer of stock as described under the application.*

A-00096521, F.5000. Zeigler's Storage & Transfer, Inc. (1235 Ritner Highway, P. O. Box 140, Carlisle, Cumberland County, PA 17013-0140), a corporation of the Commonwealth of Pennsylvania—stock transfer—for the approval of the transfer of all of the issued and outstand-

ing stock, from Jean M. Zeigler (3,000 shares) to Brenda Z. Davidson (1,500 shares) and Kimberly C. Zeigler (1,500 shares). *Attorney:* David H. Radcliff, 20 Erford Road, Suite 300A, Lemoyne, PA 17043.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 03-379. Filed for public inspection February 28, 2003, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #03-021.6, Fire Protection Repairs, at Packer Avenue Marine Terminal (PAMT), until 2 p.m. on Thursday, March 20, 2003. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available March 4, 2003. The cost of the bid document is \$35.00 (includes 7% PA Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractor must comply with all applicable equal opportunity laws and regulations.

Mandatory prebid job site meeting will be held March 13, 2003, at 10 a.m. at the job site, Columbus Blvd. and Packer Ave., Philadelphia, PA 19148 (entrance down river gate at Pump House #1).

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 03-380. Filed for public inspection February 28, 2003, 9:00 a.m.]

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #03-046.1 for Bollards until 2 p.m. on Tuesday, March 11, 2003. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available March 5, 2003. PRPA is an equal opportunity employer. Contractor must comply with all applicable equal employment opportunity laws and regulations.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 03-381. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
PA Department of Community and Economic Development
374 Forum Building
Harrisburg, PA 17120
800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services

Location: Harrisburg, Pa.

Duration: 12/1/93-12/30/93

Contact: Procurement Division
787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:)
Vendor Services Section
717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

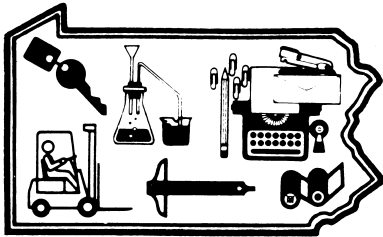
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, *"Frequently Asked Questions About State Contracts,"* explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**
 Pennsylvania State Treasury
 Room G13 Finance Building
 Harrisburg, PA 17120
 717-787-2990
 1-800-252-4700

BARBARA HAFER,
State Treasurer

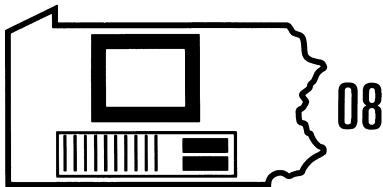


Commodities

027019 This is second notice for this item of steel grid decking totaling 747 sq. ft. The area will have 4 panels @ 6'3" x 24' long and one panel @ 6'1 1/2" x 24' for a total of 5 panels.

Department: Transportation
Location: 1200 West Fourth St., Lewistown, PA 17044
Duration: Within 30 days after receipt of purchase order
Contact: Don Woodward, (717) 436-2187

SERVICES



Computer Related Services

TP03 Personal Computer general application and support services.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Terry Pierucci, (814) 393-2233

TP01 Computer network equipment, maintenance and repair services.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Terry Pierucci, (814) 393-2233



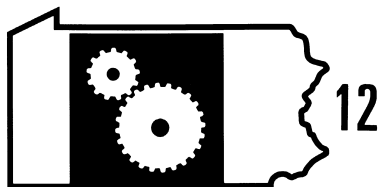
Court Reporting

CLDGJCR20 Provide court reporting services for the Twentieth Statewide Investigating Grand Jury to be housed in Harrisburg (downtown), Dauphin County, PA. Services are required for the Empanelment Session scheduled for March 25, 2003, and for the first Grand Jury Session beginning the week of April 7-11, 2003. When the Grand Jury sessions begin, services will be required four to five days per week based on the 2003 schedule.

Department: Attorney General
Location: Harrisburg, PA - downtown
Duration: March 25, 2003, through August, 2004, with a possible six-month extension through February, 2005.
Contact: Jean Kreiser, (717) 783-2369

GJPGH-CR21 Provide court reporting services for the Twenty-First Statewide Investigating Grand Jury to be housed in Pittsburgh (downtown), Allegheny County, PA. Services are required for the Empanelment Session scheduled for April 28, 2003, and for the first Grand Jury Session beginning the week of April 29-May 2, 2003. When the Grand Jury sessions begin, services will be required four to five days per week based on the 2003 schedule.

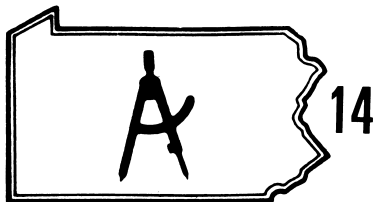
Department: Attorney General
Location: Pittsburgh, PA (downtown)
Duration: April 28, 2003, through September, 2004, with a possible six-month extension through March, 2005.
Contact: Jean M. Kreiser, (717) 783-2369



Drafting and Design Services

KURFP-0052R Kutztown University is seeking interested Professionals for design services for a proposed Campus Recreation Center to be located at Kutztown University. The University will accept and review proposals provided by joint ventures of Architectural, Structural, Mechanical, and Electrical firms in response to this RFP, as well as "full service" firms, defined as firms including all necessary disciplines required to carry out this design except those outlined elsewhere in the RFP as "specialty consultants." All Prime Professionals, whether joint venture or full service, must demonstrate in the proposal that processes, procedures and overall methodologies are in place in order to ensure proper coordination, control, interdisciplinary review, final accountability and overall liability for design components accomplished by any sub-consultants. Standard forms of contracts outlining relationships with any sub-consultants should be provided with the proposal. Negotiations and submission of cost data will only be required from the firm chosen by the Selection Board, based on the selection criteria cited in this RFP. While the State System of Higher Education has no fixed fee schedule, the negotiation of a "fair and reasonable fee" will be a prime consideration in successful negotiations following the slating and selection process. For purposes of this RFP, the benchmark for a "fair and reasonable" fee evaluation will be based in part on the current DGS fee schedule for similar projects, as well as in part on other state's higher education system fee schedules for similar work. RFP packages are available for a nonrefundable fee of \$15.00 from: Barbara Barish, Contract Specialist, Kutztown University, Facilities Office of Planning and Construction, P. O. Box 730, Kutztown, PA, 19530, Phone: (610) 683-4602. RFP packages are available February 24, 2003. A pre-proposal meeting will not be scheduled. Proposals are to be received no later than 3 p.m., March 19, 2003, in Room 229, Facilities Office of Planning and Construction. Nondiscrimination and Equal Opportunity are the policies of the Commonwealth and the State System of Higher Education. All applications submitted are subject to review by Slating and Selection Boards. The System Boards disclaim any liability whatsoever as to their review of applications submitted and in formulating their recommendations for selection. All recommendations for selection made by the Boards shall be final pursuant to the Act of November, 1992, (P.L. 660, No. 188). The System encourages responses from small firms, minority firms, women-owned firms and firms which have not previously performed work for the System, and will consider joint ventures which will enable these firms to participate in System professional service contracts.

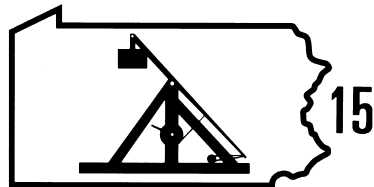
Department: State System of Higher Education
Location: Kutztown University, Kutztown, PA 19530
Duration: Design to begin on or about July 1, 2003
Contact: Barbara Barish, (610) 683-4602



Engineering Services

PennDOT-ECMS The Pennsylvania Department of Transportation has established a website advertising for the retention of engineering firms. You can view these business opportunities by going to the Department of Transportation's Engineering and Construction Management System at www.dot2.state.pa.us.

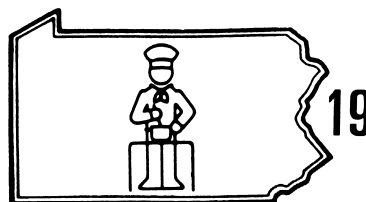
Department: Transportation
Location: Various
Contact: www.dot2.state.pa.us



Environmental Maintenance Service

BOGM 02-2 Cleaning Out and Plugging Twelve (12) Abandoned and Orphan Gas Wells (Mark Lawecki, William H. Parson, Jane Noble, Ross S. Miller, David E. Graff, Bonita Mansfield, Douglas P. Plance, Shawn S. Panaro, Norwin School District, Debra C. Orefice, Catherine Grotke, John J. Frydrych and the West Moreland Conservancy Properties). Wells are estimated to be 2,000 and 3,806 feet in depth each; prepare and restore well sites and mobilize and demobilize plugging equipment. This project issues February 28, 2003, and bids will be opened March 27, 2003, at 2 p.m. Payment in the amount of \$10.00 must be received before bid documents will be sent.

Department: Environmental Protection
Location: Allegheny, Penn and North Huntingdon Townships and the Borough of Murrysburg, Westmoreland County
Duration: 180 calendar days after notice to proceed
Contact: Construction Contracts Section, (717) 783-7994



Food

CN00001663 Miscellaneous Foods.

Department: Public Welfare
Location: Danville State Hospital, 200 State Hospital Drive, Danville, PA 17821
Duration: April 1, 2003—June 30, 2003
Contact: Tina Robbins, (570) 271-4578

CN00001664 Meat and Meat Products.

Department: Public Welfare
Location: Danville State Hospital, 200 State Hospital Drive, Danville, PA 17821
Duration: April 1, 2003—June 30, 2003
Contact: Tina Robbins, (570) 271-4578

CN00001662 Dairy Products.

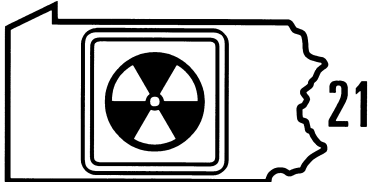
Department: Public Welfare
Location: Danville State Hospital, 200 State Hospital Drive, Danville, PA 17821
Duration: April 1, 2003—June 30, 2003
Contact: Tina Robbins, (570) 271-4578

#17 The bid is for meat, meat products, turkey, chicken and miscellaneous entrees. A copy of the bid packet is available by contacting the Purchasing Department by Phone (610) 740-3425 or FAX (610) 740-3424.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18190-2498
Duration: April 2003 to June 2003
Contact: Robert Mitchell, Purchasing Agent, (610) 740-3425

CN00001665 Poultry.

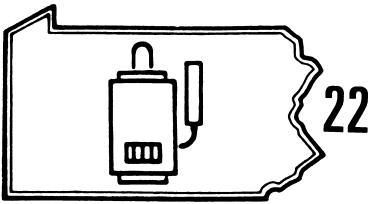
Department: Public Welfare
Location: Danville State Hospital, 200 State Hospital Drive, Danville, PA 17821
Duration: April 1, 2003—June 30, 2003
Contact: Tina Robbins, (570) 271-4578



Hazardous Material Services

DB06 Asbestos and Infectious Waste Management Services.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365



HVAC Services

DB05 Air conditioning repair services for Main Campus in Clarion, PA; and branch campus in Oil City, PA

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365



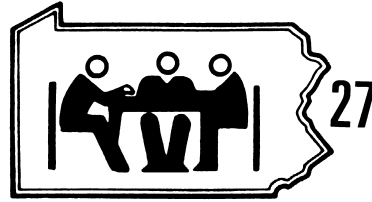
Janitorial Services

DB02 Custodial services for main campus, Clarion, PA.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365

DB03 Custodial services for Venango County Branch Campus, Oil City, PA

Department: State System of Higher Education
Location: Clarion University of PA, Oil City, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365



Lodging/Meeting Facilities

GJPGH-HA21 Provide hotel accommodations for the Twenty-First Statewide Investigating Grand Jury to be housed in Pittsburgh (downtown), Allegheny County, PA. Services are required for April 27, 2003, the evening prior to the scheduled Empanelment Session on April 28, 2003, and for the first Grand Jury Session beginning the week of April 29-May 2, 2003. When the Grand Jury sessions begin, services will be required four to five days per week based on the 2003 schedule.

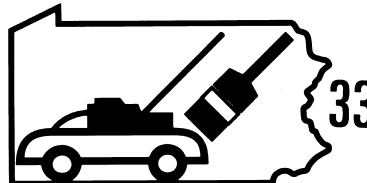
Department: Attorney General
Location: Pittsburgh, PA - downtown
Duration: April 27, 2003, through September, 2004, with a possible six-month extension through March, 2005
Contact: Jean M. Kreiser, (717) 783-2369

SU-02-21 Shippensburg University is seeking vendors interested in submitting bids for Conference facilities in the Hershey, PA, area for the timeframe of June 4-6, 2003. Interested vendors must have facilities for 600 individuals for lodging, meeting rooms, food service and audio/visual equipment for duration of conference. Please fax your request to be added to the bidders list to Attn: Pamela King at (717) 477-1350. Requests must be received by March 5, 2003. All responsible bidders are invited to participate, including MBE/WBE firms.

Department: State System of Higher Education
Location: Shippensburg University, 1871 Old Main Dr., Shippensburg, PA 17257
Duration: June 4, 5 and 6, 2003
Contact: Pamela A. King, (717) 477-1386

CLDGJHA20 Provide hotel accommodations for the Twentieth Statewide Investigating Grand Jury to be housed in Harrisburg (downtown), Dauphin County, PA. Services are required for March 24, 2003, the evening prior to the March 25th, 2003 scheduled Empanelment Session, and for April 6, 2003, the evening prior to the first Grand Jury Session beginning the week of April 7-11, 2003. When the Grand Jury sessions begin, services will be required four to five days per week based on the 2003 schedule.

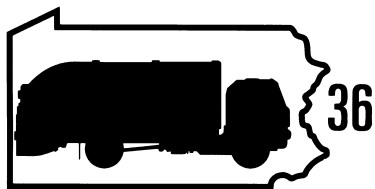
Department: Attorney General
Location: Harrisburg, PA - downtown
Duration: March 24, 2003, through August, 2004, with a possible six-month extension through February, 2005
Contact: Jean M. Kreiser, (717) 783-2369



Property Maintenance

DES053 Provide snow and ice removal services at the Selinsgrove Driver Exam Site. Bid packages can be obtained by calling (717) 783-3931 or faxing request to (717) 783-7971. Bid opening date is 2-28-03. Service will be needed 11-1-03.

Department: Transportation
Location: Selinsgrove Driver Exam Site, 1015 Route 533, Selinsgrove, PA 17870
Duration: 5 years (effective 11-1-03)
Contact: Susan Sobotor, (717) 783-3931



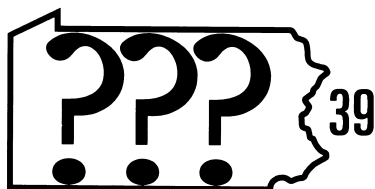
Sanitation

DB01 Refuse removal services at Venango County Branch Campus.

Department: State System of Higher Education
Location: Clarion University of PA, Oil City, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365

DB04 Refuse removal services, Main Campus, Clarion, PA

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365



Miscellaneous

TP04 HIV/AIDS Education, prevention and case management services in Erie, Mercer and Lawrence Counties.

Department: State System of Higher Education
Location: Clarion University of PA - NW Alliance, Clarion, PA
Duration: 1 Year Max; Renewable
Contact: Terry Pierucci, (814) 393-2233

DB07 Recyclable waste management services.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365

30004300 Contractor to provide chaplaincy services for inmates of Muslim faith at SCI-Greene and SCI-Waynesburg in Waynesburg, PA. During period of 07/01/2003 through 06/30/2004. Hours of service are estimated at 8 hours weekly at each institution but may increase/decrease during term as determined by facilities' chaplaincy director.

Department: Corrections
Location: SCI-Greene, 169 Progress Dr., Waynesburg, PA 15370 and SCI-Waynesburg, 373 Prison Rd., Waynesburg, PA 15370.
Duration: 07/01/2003 through 6/30/2004
Contact: Laura Mohr, Purchasing Agent, (724) 852-5534

DB08 Cleaning services for blinds, carpet and furniture.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Dinah Bowman, (814) 393-2365

TP02 Telephone system repair and installation services.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 5 Years Maximum
Contact: Terry Pierucci, (814) 393-2233

RB01 Bus Transportation services for intercollegiate athletic teams.

Department: State System of Higher Education
Location: Clarion University of PA, Clarion, PA
Duration: 1 Year Maximum
Contact: Robin Bish, (814) 393-2233

[Pa.B. Doc. No. 03-382. Filed for public inspection February 28, 2003, 9:00 a.m.]

DESCRIPTION OF LEGEND

- | | |
|--|---|
| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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DONALD T. CUNNINGHAM, Jr.
Acting Secretary

Special Notice

Effective February 1, 2003, the contract awards issued by the Department of General Services (Department), Bureau of Purchases, will no longer be published in the *Pennsylvania Bulletin*. This information will continue to be available on the Department's website at www.dgs.state.pa.us, DGS KEYWORD "Procurement Awards."

DONALD T. CUNNINGHAM, Jr.,
Acting Secretary

[Pa.B. Doc. No. 03-383. Filed for public inspection February 28, 2003, 9:00 a.m.]
